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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 SEATTLE IRON & METALS
11 CORPORATION,

12 Plaintiff,

13 v.

14 CROWN CORK & SEAL COMPANY, INC.;
15 CONTINENTAL HOLDINGS, INC.; PETER
16 KIEWIT SONS, INC.; MANSON
17 CONSTRUCTION CO.; MAPLE LEAF
18 PROPERTY MANAGEMENT, INC.;
19 OTHELLO STREET WAREHOUSE
20 CORPORATION; CONTINENTAL
21 BEVERAGE PACKAGING, INC.; CROWN
22 BEVERAGE PACKAGING, INC.;
23 CONTINENTAL CAN COMPANY, USA,
24 INC.; THE CONTINENTAL GROUP, INC.;
25 CONTINENTAL GROUP, INC.; and
26 CONTINENTAL CAN COMPANY, INC.,

27 Defendants.

No.

FIRST AMENDED COMPLAINT FOR
RECOVERY OF ENVIRONMENTAL
CLEANUP COSTS, FOR A
DECLARATORY JUDGMENT, AND
FOR DAMAGES

28 Plaintiff Seattle Iron & Metals Corporation, by and through its counsel of record,
alleges as follows:

29 I. JURISDICTION AND VENUE

30 1.1 This court has jurisdiction over the subject matter of this case pursuant to the
31 Comprehensive Environmental Response, Compensation, and Liability Act of 1980



1 (“CERCLA”), 42 U.S.C. § 9601 *et. seq.* as amended by the Superfund Amendment and
2 Reauthorization Act of 1986 (“SARA”), 42 U.S.C. § 9613(b).

3 1.2 This court has jurisdiction over the subject matter of this action pursuant to 28
4 U.S.C. §§ 2201 and 1331, because this civil action arises under the laws of the United States.

5 1.3 This court has subject matter jurisdiction over the state law claims asserted
6 herein based on the supplemental jurisdiction provided in 28 U.S.C. § 1367. The claims under
7 state law arise out of the same nucleus of operative facts as the claims under federal law. The
8 federal claims are substantial. The state and federal claims are so intertwined that it is
9 appropriate for this court to exercise its jurisdiction over the state law claims set forth in this
10 Complaint.

11 1.4 The Western District of Washington is the proper venue for this action
12 pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391 because the “release or damages
13 occurred” at a location within the Western District.

14 II. PARTIES

15 2.1 Plaintiff SEATTLE IRON & METALS CORPORATION (“SIMC”) is a
16 Washington corporation, and maintains its principal place of business in Seattle, Washington.

17 2.2 Defendant CROWN CORK & SEAL COMPANY, INC., is a Pennsylvania
18 corporation doing business in the State of Washington.

19 2.3 Defendant CONTINENTAL HOLDINGS, INC., is a Wyoming corporation
20 not authorized to do business in the State of Washington.

21 2.4 Defendant PETER KIEWIT SONS, INC., is a Delaware corporation doing
22 business in the State of Washington.

23 2.5 Defendant MANSON CONSTRUCTION CO. is a Washington corporation
24 doing business in the State of Washington.

25 2.6 Defendant MAPLE LEAF PROPERTY MANAGEMENT, INC., is a
26 Canadian corporation doing business in the State of Washington.

1 the stock of THE CONTINENTAL GROUP, INC., and/or CONTINENTAL CAN
2 COMPANY, USA, INC., and/or CONTINENTAL BEVERAGE PACKAGING, INC.

3 2.17 On information and belief, in 1990, CROWN CORK & SEAL COMPANY,
4 INC., or CROWN BEVERAGE PACKAGING, INC. acquired all outstanding stock of
5 CONTINENTAL BEVERAGE PACKAGING, INC., from CONTINENTAL HOLDINGS,
6 INC.

7 2.18 SIMC believes that all liabilities of CONTINENTAL CAN COMPANY, INC.
8 arising out of ownership or operation of the Site (defined below) were assumed expressly or
9 by operation of law by one or more of the above-named defendants. At the present time,
10 SIMC does not have access to all information regarding the various inter-company transfers
11 alleged above. One or more defendants do possess the information and knowledge necessary
12 to determine which defendant or defendants, or what non-parties, are liable for the ownership
13 or operation of the Site by CONTINENTAL CAN COMPANY, INC. In the event that
14 environmental liabilities for the Site were sold or otherwise transferred to an entity other than
15 one identified as a defendant in this action, SIMC reserves the right to amend its Complaint to
16 identify any such entity as a defendant.

17 **III. FACTUAL ALLEGATIONS**

18 **Ownership Of Site**

19 3.1 From approximately 1936 to approximately 1982, CONTINENTAL CAN
20 COMPANY, INC., and its successor corporations CONTINENTAL GROUP, INC., and
21 THE CONTINENTAL GROUP, INC., owned and operated an 8.5-acre parcel of land ("the
22 Site") located in Seattle, Washington, bordered on the west by the Duwamish Waterway, on
23 the north by Myrtle Street, on the east by 7th Avenue, and on the south by a separate parcel.
24 The legal description of the Site is attached as Exhibit 1.

25 3.2 CONTINENTAL CAN COMPANY, INC.; CONTINENTAL GROUP, INC.;
26 and THE CONTINENTAL GROUP, INC., used the Site to manufacture metal cans.

1 3.3 During operations at the Site between 1936 and 1982, CONTINENTAL CAN
2 COMPANY, INC., and/or CONTINENTAL GROUP, INC., and/or THE CONTINENTAL
3 GROUP, INC., constructed and used at least seven petroleum product underground storage
4 tanks ("USTs"), five above-ground storage tanks ("ASTs"), an above-ground oil pipeline, and
5 a pump house. In addition, CONTINENTAL CAN COMPANY, INC., and/or
6 CONTINENTAL GROUP, INC., and/or THE CONTINENTAL GROUP, INC., constructed
7 and used a warehouse, paint shop, oil house, and a boiler house in conjunction with canning
8 operations.

9 3.4 In 1982, MANSON CONSTRUCTION CO. purchased the Site. Between
10 1982 and 1988, MANSON CONSTRUCTION CO. leased the property to various tenants,
11 including Messans Traffic, Mega Terminals, Norse Pacific & Steamship Line, and Pacific
12 Terminals, all of whom used the Site for their warehousing and other activities.

13 3.5 In 1988, OTHELLO STREET WAREHOUSE CORPORATION, a subsidiary
14 of MAPLE LEAF PROPERTY MANAGEMENT, INC., purchased the Site. OTHELLO
15 STREET WAREHOUSE CORPORATION continued to lease the property to Pacific
16 Terminals.

17 3.6 In 1996, a preliminary environmental site assessment of the Site indicated the
18 potential for multiple sources of petroleum hydrocarbons and other compounds at the Site. In
19 approximately 1997 or 1998, MAPLE LEAF PROPERTY MANAGEMENT, INC.,
20 commenced a voluntary cleanup of certain portions of the Site.

21 3.7 In 1998, SIMC purchased the Site. As a remedial measure, SIMC excavated
22 large quantities of contaminated soil and covered or "capped" the entire Site with a low-
23 permeable asphaltic concrete pavement to minimize infiltration.

24 **Operations And Site Contamination**

25 3.8 On information and belief, the operations conducted by CONTINENTAL
26 CAN COMPANY, INC.; CONTINENTAL GROUP, INC.; THE CONTINENTAL
27 GROUP, INC.; CONTINENTAL CAN COMPANY, USA, INC.; and CONTINENTAL

1 BEVERAGE PACKAGING, INC., from 1936 to 1990 caused soils and groundwater at the
2 Site to become contaminated with petroleum hydrocarbons and hazardous substances.

3 3.9 On information and belief, the operations conducted by PETER KIEWIT
4 SONS, INC., and CONTINENTAL HOLDINGS, INC., and their subsidiary corporations
5 from 1984 to 1990 caused soils and groundwater at the Site to become contaminated with
6 petroleum hydrocarbons and hazardous substances.

7 3.10 On information and belief, the operations conducted by predecessors in interest
8 of CROWN CORK & SEAL COMPANY, INC., and/or CROWN BEVERAGE
9 PACKAGING, INC. between 1936 and 1990 caused soils and groundwater at the Site to
10 become contaminated with petroleum hydrocarbons and hazardous substances.

11 IV. LEGAL CLAIMS

12 A. First Cause of Action — Recovery of Response 13 Costs and Contribution Under CERCLA

14 4.1 SIMC realleges all preceding paragraphs as if fully set forth herein.

15 4.2 The Comprehensive Environmental Response, Compensation, and Liability
16 Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613, provides a right of action for private parties
17 to recover the costs of responding to the release, or threatened release, of hazardous
18 substances into the environment from past and present owners and operators of contaminated
19 facilities or from those who have arranged for the disposal of hazardous substances.

20 4.3 The Site is a "facility" as that term is used in 42 U.S.C. § 9601(9).

21 4.4 SIMC; CROWN CORK & SEAL COMPANY, INC.; CONTINENTAL
22 HOLDINGS, INC.; PETER KIEWIT SONS, INC.; MANSON CONSTRUCTION CO.;
23 MAPLE LEAF PROPERTY MANAGEMENT, INC.; OTHELLO STREET WAREHOUSE
24 CORPORATION; CONTINENTAL BEVERAGE PACKAGING, INC.; CROWN
25 BEVERAGE PACKAGING, INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE
26 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
27 CAN COMPANY, INC., are a "persons" as that term is defined in 42 U.S.C. § 9601(21).

1 4.5 There has been a release of "hazardous substances," as that term is defined in
2 42 U.S.C. § 9601(14), into the environment at, near, and from the Site.

3 4.6 The release of hazardous substances into the environment at the Site has
4 required and will in the future require response action and the expenditure of response costs
5 with respect to the facility, as those terms are used in 42 U.S.C. §§ 9607 and 9613.

6 4.7 The response action undertaken and to be undertaken by SIMC and the costs
7 thereby incurred are or will be "not inconsistent" with the national contingency plan as that
8 term is used in 42 U.S.C. §§ 9607 and 9613.

9 4.8 SIMC has satisfied any and all conditions precedent to the undertaking of
10 response actions and the incurring of response costs with respect to the facility and to the
11 recovery of such costs from defendants.

12 4.9 CONTINENTAL HOLDINGS, INC.; PETER KIEWIT SONS, INC.;
13 MANSON CONSTRUCTION CO.; MAPLE LEAF PROPERTY MANAGEMENT, INC.;
14 OTHELLO STREET WAREHOUSE CORPORATION; CONTINENTAL BEVERAGE
15 PACKAGING, INC.; CROWN BEVERAGE PACKAGING, INC.; CONTINENTAL CAN
16 COMPANY, USA, INC.; THE CONTINENTAL GROUP, INC.; CONTINENTAL
17 GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., owned and/or operated the
18 Site at the time that hazardous substances were deposited there. The operations and related
19 activities of these entities created liability under 42 U.S.C. § 9607(a)(2) and (a)(3).

20 4.10 CROWN CORK & SEAL COMPANY, INC., and/or CROWN BEVERAGE
21 PACKAGING, INC. are successors in interest to CONTINENTAL BEVERAGE
22 PACKAGING, INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE
23 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
24 CAN COMPANY, INC., and assumed their liability under 42 U.S.C. § 9607(a)(2) and (a)(3)
25 and under common law principles of successor liability.

26 4.11 As a successor in interest to CONTINENTAL BEVERAGE PACKAGING,
27 INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE CONTINENTAL GROUP,

1 INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,
2 CROWN CORK & SEAL COMPANY, INC. and/or CROWN BEVERAGE PACKAGING,
3 INC. are liable to SIMC pursuant to 42 U.S.C. § 9607(a) for all response costs incurred and to
4 be incurred by SIMC as a result of the release of hazardous substances into the environment
5 from the Site. CROWN CORK & SEAL COMPANY, INC. and CROWN BEVERAGE
6 PACKAGING, INC. are also liable to SIMC pursuant to 42 U.S.C. § 9613(f) for all response
7 costs that SIMC has incurred and will incur.

8 4.12 CONTINENTAL HOLDINGS, INC., is a successor in interest to THE
9 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
10 CAN COMPANY, INC., and assumed their liability under 42 U.S.C. § 9607(a)(2) and (a)(3)
11 and under common law principles of successor liability.

12 4.13 As a successor in interest to THE CONTINENTAL GROUP, INC.;
13 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,
14 CONTINENTAL HOLDINGS, INC., is liable to SIMC pursuant to 42 U.S.C. § 9607(a) for
15 all response costs incurred and to be incurred by SIMC as a result of the release of hazardous
16 substances into the environment from the Site. CONTINENTAL HOLDINGS, INC., is also
17 liable to SIMC pursuant to 42 U.S.C. § 9613(f) for all response costs that SIMC has incurred
18 and will incur.

19 4.14 PETER KIEWIT SONS, INC., is a successor in interest to THE
20 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
21 CAN COMPANY, INC., and assumed their liability under 42 U.S.C. § 9607(a)(2) and (a)(3)
22 and under common law principles of successor liability.

23 4.15 As a successor in interest to THE CONTINENTAL GROUP, INC.;
24 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., PETER
25 KIEWIT SONS, INC., is liable to SIMC pursuant to 42 U.S.C. § 9607(a) for all response
26 costs incurred and to be incurred by SIMC as a result of the release of hazardous substances
27

1 into the environment from the Site. PETER KIEWIT SONS, INC., is also liable to SIMC
2 pursuant to 42 U.S.C. § 9613(f) for all response costs that SIMC has incurred and will incur.

3 4.16 Each of the defendants is liable to SIMC, pursuant to 42 U.S.C. §§ 9607 and
4 9613, for the costs SIMC has incurred and will continue to incur in response to the release or
5 threatened release of hazardous substances at and near the facility, plus interest thereon, at the
6 maximum rate allowed by law, from the that SIMC expended such funds.

7 4.11 SIMC is entitled to a declaratory judgment on the liability of CROWN CORK
8 & SEAL COMPANY, INC.; CONTINENTAL HOLDINGS, INC.; PETER KIEWIT SONS,
9 INC.; MANSON CONSTRUCTION CO.; MAPLE LEAF PROPERTY MANAGEMENT,
10 INC.; OTHELLO STREET WAREHOUSE CORPORATION; CONTINENTAL
11 BEVERAGE PACKAGING, INC.; CROWN BEVERAGE PACKAGING, INC.;
12 CONTINENTAL CAN COMPANY, USA, INC.; THE CONTINENTAL GROUP, INC.;
13 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., for all
14 future response costs pursuant to 42 U.S.C. § 9613(g)(2).

15 **B. Second Cause of Action — Recovery of Response**
16 **Costs and Contribution Under MTCA**

17 5.1 SIMC realleges the preceding paragraphs as if fully set forth herein.

18 5.2 CROWN CORK & SEAL COMPANY, INC.; CONTINENTAL HOLDINGS,
19 INC.; PETER KIEWIT SONS, INC.; MANSON CONSTRUCTION CO.; MAPLE LEAF
20 PROPERTY MANAGEMENT, INC.; OTHELLO STREET WAREHOUSE
21 CORPORATION; CONTINENTAL BEVERAGE PACKAGING, INC.; CROWN
22 BEVERAGE PACKAGING, INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE
23 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
24 CAN COMPANY, INC., are “owners” or “operators” of the Site, as those terms are defined
25 under the Model Toxics Control Act (“MTCA”), RCW 70.105D.020(12).

26 5.3 The Site is a “facility” as that term is defined under MTCA,
27 RCW 70.105D.020(4).

1 5.4 Petroleum hydrocarbons are hazardous substances under MTCA,
2 RCW 70.105D.020(7)(d).

3 5.5 CROWN CORK & SEAL COMPANY, INC., and/or CROWN BEVERAGE
4 PACKAGING, INC. are successors in interest to CONTINENTAL BEVERAGE
5 PACKAGING, INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE
6 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
7 CAN COMPANY, INC., which owned and operated the Site at the time of disposal or release
8 of hazardous substances, including petroleum hydrocarbons, at the Site.

9 5.6 CONTINENTAL HOLDINGS, INC., is a successor in interest to THE
10 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
11 CAN COMPANY, INC., which owned and operated the Site at the time of disposal or release
12 of hazardous substances, including petroleum hydrocarbons, at the Site.

13 5.7 PETER KIEWIT SONS, INC., is a successor in interest to THE
14 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
15 CAN COMPANY, INC., which owned and operated the Site at the time of disposal or release
16 of hazardous substances, including petroleum hydrocarbons, at the Site.

17 5.8 Pursuant to RCW 70.105D.040 and RCW 70.105D.080, CROWN CORK &
18 SEAL COMPANY, INC.; CROWN BEVERAGE PACKAGING, INC.; CONTINENTAL
19 HOLDINGS, INC.; and PETER KIEWIT SONS, INC., as successors to owners or operators
20 of the Site, are strictly liable for all remedial action costs incurred and to be incurred by SIMC
21 and in response to the release of hazardous substances at the Site, including attorneys fees and
22 costs.

23 5.9 MANSON CONSTRUCTION CO.; OTHELLO STREET WAREHOUSE
24 CORPORATION; AND MAPLE LEAF PROPERTY MANAGEMENT, INC., owned
25 and/or operated the Site at the time of disposal or release of hazardous substances, including
26 petroleum hydrocarbons, at the Site.

1 5.10 Pursuant to RCW 70.105D.040 and RCW 70.105D.080, MANSON
2 CONSTRUCTION CO.; OTHELLO STREET WAREHOUSE CORPORATION; and
3 MAPLE LEAF PROPERTY MANAGEMENT, INC., as owners or operators of the Site, are
4 strictly liable for all remedial action costs incurred and to be incurred by SIMC and in
5 response to the release of hazardous substances at the Site, including attorneys fees and costs.

6 **C. Third Cause of Action — Declaratory Relief**
7 **Under Federal Law**

8 6.1 SIMC realleges the preceding paragraphs as if fully set forth herein.

9 6.2 An actual controversy within the jurisdiction of this court exists between
10 SIMC and Defendants CROWN CORK & SEAL COMPANY, INC.; CONTINENTAL
11 HOLDINGS, INC.; PETER KIEWIT SONS, INC.; MANSON CONSTRUCTION CO.;
12 MAPLE LEAF PROPERTY MANAGEMENT, INC.; OTHELLO STREET WAREHOUSE
13 CORPORATION; CONTINENTAL BEVERAGE PACKAGING, INC.; CROWN
14 BEVERAGE PACKAGING, INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE
15 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
16 CAN COMPANY, INC.

17 6.3 Pursuant to 28 U.S.C. § 2201, SIMC is entitled to a declaratory judgment that
18 Defendants are liable for response costs to be incurred by SIMC in the future as a result of the
19 release or hazardous substances from the Site into the environment.

20 **D. Fourth Cause of Action — Declaratory Relief**
21 **Under State Law**

22 7.1 SIMC realleges the preceding paragraphs as if fully set forth herein.

23 7.2 An actual controversy within the jurisdiction of this court exists between
24 SIMC and Defendants CROWN CORK & SEAL COMPANY, INC.; CONTINENTAL
25 HOLDINGS, INC.; PETER KIEWIT SONS, INC.; MANSON CONSTRUCTION CO.;
26 MAPLE LEAF PROPERTY MANAGEMENT, INC.; OTHELLO STREET WAREHOUSE
27 CORPORATION; CONTINENTAL BEVERAGE PACKAGING, INC.; CROWN

1 BEVERAGE PACKAGING, INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE
2 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
3 CAN COMPANY, INC.

4 7.3 Pursuant to RCW Chapter 7.24, SIMC is entitled to a declaratory judgment
5 that Defendants are liable for response costs to be incurred by SIMC in the future as a result
6 of the release or threatened release of hazardous substances from the Site into the
7 environment.

8 **E. Fifth Cause of Action — Negligence**

9 8.1 SIMC realleges the preceding paragraphs as if fully set forth herein.

10 8.2 CONTINENTAL HOLDINGS, INC.; PETER KIEWIT SONS, INC.;
11 MANSON CONSTRUCTION CO.; MAPLE LEAF PROPERTY MANAGEMENT, INC.;
12 OTHELLO STREET WAREHOUSE CORPORATION; CONTINENTAL BEVERAGE
13 PACKAGING, INC.; CROWN BEVERAGE PACKAGING, INC.; CONTINENTAL CAN
14 COMPANY, USA, INC.; THE CONTINENTAL GROUP, INC.; CONTINENTAL
15 GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., owed SIMC a duty to use
16 reasonable care when handling hazardous substances used in or generated by operations at the
17 Site.

18 8.3 CONTINENTAL HOLDINGS, INC.; PETER KIEWIT SONS, INC.;
19 MANSON CONSTRUCTION CO.; MAPLE LEAF PROPERTY MANAGEMENT, INC.;
20 OTHELLO STREET WAREHOUSE CORPORATION; CONTINENTAL BEVERAGE
21 PACKAGING, INC.; CROWN BEVERAGE PACKAGING, INC.; CONTINENTAL CAN
22 COMPANY, USA, INC.; THE CONTINENTAL GROUP, INC.; CONTINENTAL
23 GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., breached their duty of
24 reasonable care by unreasonably and improperly handling hazardous substances at the Site,
25 such that those hazardous substances were released into the environment at the Site.

26 8.4 As a successor in interest to CONTINENTAL BEVERAGE PACKAGING,
27 INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE CONTINENTAL GROUP,

1 INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,
2 CROWN CORK & SEAL COMPANY, INC. and/or CROWN BEVERAGE PACKAGING,
3 INC. are liable for all damages proximately caused by the negligent operations of these entities.

4 8.5 As a successor in interest to THE CONTINENTAL GROUP, INC.;
5 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,
6 CONTINENTAL HOLDINGS, INC., is liable for all damages proximately caused by the
7 negligent operations of these entities.

8 8.6 As a successor in interest to THE CONTINENTAL GROUP, INC.;
9 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., PETER
10 KIEWIT SONS, INC., is liable for all damages proximately caused by the negligent operations
11 of these entities.

12 **F. Sixth Cause of Action — Nuisance**

13 9.1 SIMC realleges the preceding paragraphs as if fully set forth herein.

14 9.2 The release of hazardous substances into the environment at the Site
15 substantially and unreasonably interferes with SIMC's use and enjoyment of the property it
16 owns and possesses, and therefore constitutes a nuisance.

17 9.3 CONTINENTAL HOLDINGS, INC.; PETER KIEWIT SONS, INC.;
18 MANSON CONSTRUCTION CO.; MAPLE LEAF PROPERTY MANAGEMENT, INC.;
19 OTHELLO STREET WAREHOUSE CORPORATION; CONTINENTAL BEVERAGE
20 PACKAGING, INC.; CROWN BEVERAGE PACKAGING, INC.; CONTINENTAL CAN
21 COMPANY, USA, INC.; THE CONTINENTAL GROUP, INC.; CONTINENTAL
22 GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., created and maintained a
23 nuisance that has caused SIMC damages, which include, without limitation, remediation costs,
24 diminished property value, lost profits, and interference with business operations.

25 9.4 As a successor in interest to CONTINENTAL BEVERAGE PACKAGING,
26 INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE CONTINENTAL GROUP,
27 INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,

1 CROWN CORK & SEAL COMPANY, INC. and/or CROWN BEVERAGE PACKAGING,
2 INC. are liable for all damages proximately caused by the creation and maintenance of the
3 nuisance, and for all actions necessary to abate the nuisance.

4 9.5 As a successor in interest to THE CONTINENTAL GROUP, INC.;
5 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,
6 CONTINENTAL HOLDINGS, INC., is liable for all damages proximately caused by the
7 creation and maintenance of the nuisance, and for all actions necessary to abate the nuisance.

8 9.6 As a successor in interest to THE CONTINENTAL GROUP, INC.;
9 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., PETER
10 KIEWIT SONS, INC., is liable for all damages proximately caused by the creation and
11 maintenance of the nuisance, and for all actions necessary to abate the nuisance.

12 **G. Seventh Cause of Action — Trespass**

13 10.1 SIMC realleges the preceding paragraphs as if fully set forth herein.

14 10.2 The operations of CONTINENTAL HOLDINGS, INC.; PETER KIEWIT
15 SONS, INC.; MANSON CONSTRUCTION CO.; MAPLE LEAF PROPERTY
16 MANAGEMENT, INC.; OTHELLO STREET WAREHOUSE CORPORATION;
17 CONTINENTAL BEVERAGE PACKAGING, INC.; CROWN BEVERAGE
18 PACKAGING, INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE
19 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL
20 CAN COMPANY, INC., caused hazardous substances to contaminate the environment at the
21 Site, thereby invading SIMC's interest in exclusive possession of its property.

22 10.3 SIMC has not given permission for such contamination of the property it owns
23 and possesses.

24 10.4 The presence of hazardous substances in the environment at the Site, and their
25 continued spreading, constitutes a continuing trespass. This trespass has caused harm and
26 continues to cause harm to SIMC and to the property it owns and possesses. Without
27

1 limitation, SIMC's damages include remediation costs, diminished property value, lost profits,
2 and interference with business operations.

3 10.5 As a successor in interest to CONTINENTAL BEVERAGE PACKAGING,
4 INC.; CONTINENTAL CAN COMPANY, USA, INC.; THE CONTINENTAL GROUP,
5 INC.; CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,
6 CROWN CORK & SEAL COMPANY, INC. and/or CROWN BEVERAGE PACKAGING,
7 INC. are liable for all damages proximately caused by the continuing trespass.

8 10.6 As a successor in interest to THE CONTINENTAL GROUP, INC.;
9 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC.,
10 CONTINENTAL HOLDINGS, INC., is liable for all damages proximately caused by the
11 continuing trespass.

12 10.7 As a successor in interest to THE CONTINENTAL GROUP, INC.;
13 CONTINENTAL GROUP, INC.; and CONTINENTAL CAN COMPANY, INC., PETER
14 KIEWIT SONS, INC., is liable for all damages proximately caused by the continuing trespass.

15 **V. PRAYER FOR RELIEF**

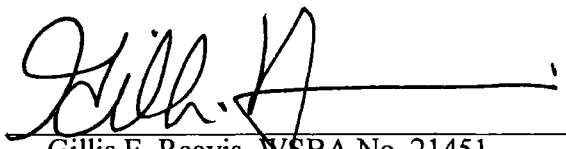
16 WHEREFORE, SIMC prays for relief as follows:

- 17 1. For an award of damages against Defendants for all response costs incurred by
18 SIMC in connection with the Site as of the time of trial and for all other damages specified
19 above, in an amount to be proven at trial.
- 20 2. For a declaration that Defendants are jointly and severally liable for all
21 response costs already incurred or to be incurred in the future by SIMC as a result of releases
22 of hazardous substances at the Site.
- 23 3. For an award of all other damages described above, in an amount to be proven
24 at trial.
- 25 4. For an award to SIMC of its costs and disbursements incurred herein, including
26 but not limited to, attorneys' fees and costs against Defendants.
- 27 5. For such other and further relief as the Court deems just and equitable.

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Dated this 30th day of August, 2002.

BROWN REAVIS & MANNING PLLC

By: 

Gillis E. Reavis, WSBA No. 21451
Stephen J. Tan, WSBA No. 22756
Attorneys for Plaintiff

DJV WORKING

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SEATTLE IRON & METALS
CORPORATION,

Plaintiff,

v.

CROWN CORK & SEAL COMPANY, INC.;
CONTINENTAL HOLDINGS, INC.; PETER
KIEWIT SONS, INC.; MANSON
CONSTRUCTION CO.; MAPLE LEAF
PROPERTY MANAGEMENT, INC.;
OTHELLO STREET WAREHOUSE
CORPORATION; CONTINENTAL
BEVERAGE PACKAGING, INC.; CROWN
BEVERAGE PACKAGING, INC.;
CONTINENTAL CAN COMPANY, USA,
INC.; THE CONTINENTAL GROUP, INC.;
CONTINENTAL GROUP, INC.; and
CONTINENTAL CAN COMPANY, INC.,

Defendants.

Case No. C02-1158P

NOTICE OF 30(b)(6) DEPOSITION
OF MANSON CONSTRUCTION CO.

TO: MANSON CONSTRUCTION CO. and its attorney of record,
Donald J. Verfurth;

AND TO: All Other Counsel Of Record

PLEASE TAKE NOTICE, pursuant to Federal Rule of Civil Procedure 30(b)(6), that
the testimony of a person or persons, designated by Manson Construction Co. as the officer,
director, managing agent or other persons(s) who consent(s) to testify on behalf of Manson

NOTICE OF CR 30(b)(6) DEPOSITION OF
MANSON CONSTRUCTION CO.
PAGE 1

BROWN REAVIS & MANNING PLLC
1201 THIRD AVENUE, SUITE 320
SEATTLE, WASHINGTON 98101
(206) 292-6300

1 Construction Co. with respect to the topics specified below, will be taken upon oral
2 examination before an officer authorized by law to administer oaths, at 9:00 a.m. on April 30,
3 2003, at the offices of Carney Badley Spellman, 700 Fifth Avenue, Suite 5800, Seattle, WA
4 98104.

5 The oral examination will continue from day to day thereafter until completed.

6 **SUBJECT MATTER OF DEPOSITION**

7 Pursuant to Federal Rule 30(b)(6), Manson Construction Co. shall designate one or
8 more person(s), officer(s), director(s), or managing agents(s) who will testify on its behalf and
9 who are knowledgeable with respect to all matters known or reasonably available to Manson
10 Construction Co. concerning:

11 1. Acquisition of any portion of the Site (as defined in Plaintiff's Amended
12 Complaint) or any property adjacent to or nearby the Site or the parcel or parcels formerly
13 owned by Continental Can Co., Inc.

14 2. Any filling or grading of land at or near the Site, including the details of such
15 filling or grading and the source of any fill material imported to the Site.

16 3. Construction, alteration or demolition of any structures on the Site.

17 4. The presence or removal of any underground or aboveground tanks, piping and
18 associated structures at the Site.

19 5. The identity of all tenants who leased any portion of the Site from Manson
20 Construction Co., the operations conducted by such tenants and the location of any
21 documents relating to such tenants or their operations.

22 6. The identity of all tenants who leased any portion of the Site from Othello
23 Warehouse Corp. or any affiliated entity, the operations conducted by such tenants and the
24 location of any documents relating to such tenants or their operations.

25 7. Any operations of Continental Can Co., Inc. at the Site.

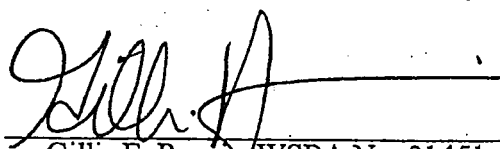
26 8. The presence, use or storage of petroleum at the Site.

27 9. Any facilities for maintenance or washing of trucks at the Site.

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Dated this 17th day of April 2003.

BROWN REAVIS & MANNING PLLC

By: 
Gillis E. Reavis, WSBA No. 21451
Attorneys for Plaintiff

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I have on this 17th day of April, 2003, served a copy of the
4 foregoing Notice of 30(b)(6) Deposition of Manson Construction Co., on the following
5 persons, in the manner indicated:

6 **VIA Legal Messenger:**

7 Donald J. Verfurth
8 CARNEY BADLEY SPELLMAN, P.S.
9 700 fifth Avenue, Suite 5800
10 Seattle, WA 98104-5017
11 Attorneys for Defendant Manson Construction Co.

12 **And Via U.S. Mail:**

13 Terence K. McGee
14 DANIELSON HARRIGAN & TOLLEFSON
15 999 Third Avenue, Suite 4400
16 Seattle, WA 98104
17 Attorneys for Defendants Crown Cork & Seal,
18 Continental Holdings, Peter Kiewit & Sons,
19 Continental Beverage, Continental Can,
20 Continental Group

21 William H. Chapman
22 James A. Goeke
23 PRESTON GATES & ELLIS LLP
24 701 Fifth Avenue, Suite 5000
25 Seattle, WA 98104-7078
26 Counsel for Othello Street Warehouse Corporation
27

28

Tricia Churchill

1 ANSWER:

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3
4 INTERROGATORY NO. 3: Identify each person you intend to use as an
5 expert witness in this lawsuit, and for each such person state with particularity the
6 matters described in Federal Rule of Civil Procedure 26(a)(2)(B). D

7 ANSWER:

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9
10 INTERROGATORY NO. 4: If you are a corporation, state the place of
11 incorporation, the date of incorporation, and the identity of all shareholders, officers,
12 directors, parent corporations, and subsidiary corporations.

13 ANSWER:

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16 INTERROGATORY NO. 5: Describe your operations at the Site, including
17 any changes in those operations over time. Include in your description both the
18 physical structures you built or used at the Site and the activities you engaged in at the
19 Site, especially those activities that involved the handling or disposal of Hazardous
20 Substances or Wastes. Include in your description of structures any above ground or
21 underground tanks for the storage of any Hazardous Substances or Wastes and any
22 conveyance devices, such as pipelines, for such materials. 3
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7

23 ANSWER:

1 INTERROGATORY NO. 6: Describe the operations of any person to whom
2 you leased any portion of the Site, including any changes in those operations over
3 time. Include in your description both the physical structures built or used by the
4 lessee and the activities engaged in by the lessee, especially those activities that
5 involved the handling or disposal of Hazardous Substances or Wastes. Include in your
6 description of structures any above ground or underground tanks for the storage of any
7 Hazardous Substances or Wastes and any conveyance devices, such as pipelines, for
8 such materials.

9 ANSWER:
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12 INTERROGATORY NO. 7: Describe all instances when anyone to your
13 knowledge placed fill material at the Site. Include in your description the date or dates
14 of filling, the quantity of fill placed, the exact location where the fill was placed, the
15 source of the fill, whether any Hazardous Substances or Wastes were believed to be in
16 the fill; and identify any documents relating to fill placement by you or by anyone else
17 at the Site.

18 ANSWER:
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21 INTERROGATORY NO. 8: Describe the details of your ownership, leasing,
22 or other occupation of any portion of the Site. Include in your description the dates of
23 such ownership, leasing or other occupation, the seller and purchaser of any
24 transactions as to which you were a party, and the lessor and lessee for any portion of
25 the property.

26 ANSWER:
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INTERROGATORY NO. 9: Identify any and all Hazardous Substances or Wastes that are or have been located in the soil or groundwater at the Site and describe the place or places at which each Hazardous Substance or Waste is located, the identity of each Hazardous Substance or Waste at each location, the quantity or concentration of each Hazardous Substance or Waste at each location, and a description of any investigations or remedial actions taken at each location.

ANSWER:

INTERROGATORY NO. 10: Please state with particularity the facts of your past and present policies or procedures governing the transportation, handling or disposal of any Hazardous Substances or Wastes and, for each such policy or procedure, the time period it was in effect.

ANSWER:

INTERROGATORY NO. 11: Please describe in detail every incident where any Hazardous Substance or Waste was generated, released, spilled, leaked, disposed or otherwise came into contact with the soil or groundwater at the Site. Include in your description the identity of each Hazardous Substance or Waste, the date of each shipment or incident of release or disposal of the Hazardous Substance or Waste, the volume or weight of the Hazardous Substance or Waste in each shipment or incident of release or disposal, and the identity of each person that generated, transported, released, or disposed of each Hazardous Substance or Waste or that selected the Site for disposal for each Hazardous Substance or Waste.

1 ANSWER:

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4 INTERROGATORY NO. 12: Do you have knowledge of other persons who
5 generated, transported, released, spilled, leaked, or disposed of Hazardous Substances
6 or Wastes at the Site? If so, provide details of each such instance.

7 ANSWER:

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10 INTERROGATORY NO. 13: Identify all persons who have knowledge of
11 any of the facts stated in your answers to Interrogatories 5, 6, 7, 8, 9, 10, 11 and 12;
12 and identify all documents that refer, relate, pertain to, or contain any of the facts
13 stated in your answers or from which those facts may be derived.

14 ANSWER:

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17 INTERROGATORY NO. 14: Identify all persons whose responsibilities
18 include the organization, maintenance, or control of your Waste Records. If you are
19 unable to answer this, identify the person or persons who have the most knowledge
20 about your Waste Records, and their organization, maintenance or control.

21 ANSWER:

1 INTERROGATORY NO. 15: Do you have or have you had a document
2 destruction procedure covering Waste Records? If your answer is in the affirmative,
3 please state with particularity the procedure, any changes made since its inception, and
4 the date of any changes, and identify all documents that refer, relate, or pertain to or
5 contain any of the facts about the procedure or from which those facts may be derived.

6 ANSWER:

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9 INTERROGATORY NO. 16: With respect to the generation, storage,
10 disposal, or other presence of Hazardous Substances or Wastes at the Site, please
11 identify any investigations or studies on this subject you have undertaken or
12 commissioned, or that you are aware of, and their results; and identify any
13 correspondence or reports submitted to any governmental agency or any other person
14 on this subject.

15 ANSWER:

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18 INTERROGATORY NO. 17: Identify all persons with whom you have
19 already settled claims arising out of the Site relating to the disposal of Hazardous
20 Substances or Waste, including any settlements with insurers.

21 ANSWER:

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24 INTERROGATORY NO. 18: Identify all persons from whom you are
25 currently seeking, or intend to seek in the future, contribution arising out of the Site,
26 and the basis for the claim against each such person.

27 ANSWER:

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INTERROGATORY NO. 19: Identify any response or remedial action costs incurred by you at the Site. Provide a detailed breakdown of all such costs.

ANSWER:

INTERROGATORY NO. 20: State whether you are aware of any response or remedial action costs incurred by other persons at the Site. If so, provide a detailed breakdown of all such costs.

ANSWER:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents identified in your answers to any of these interrogatories or that support your answers.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Please produce all Waste Records.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Please produce all documents that relate to Hazardous Substances handled, transported, stored, released, spilled, leaked, disposed or used at the Site.

1 RESPONSE:

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4 REQUEST FOR PRODUCTION NO. 4: Please produce all documents related to the
5 placement of any fill at the Site.

6 RESPONSE:

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9 REQUEST FOR PRODUCTION NO. 5: Please produce all documents related to
10 your ownership, operation or other use of the Site.

11 RESPONSE:

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14 REQUEST FOR PRODUCTION NO. 6: Please produce all documents related to the
15 operation or other use of the Site by any lessees during your period of ownership.

16 RESPONSE:

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19 REQUEST FOR PRODUCTION NO. 7: Please produce all personnel records that
20 contain any reference to Hazardous Substances or Wastes at the Site.

21 RESPONSE:

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24 REQUEST FOR PRODUCTION NO. 8: Please produce all studies or investigations
25 of Hazardous Substances or Wastes at the Site.

26 RESPONSE:

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REQUEST FOR PRODUCTION NO. 9: Please produce all reports of experts who may be called to testify in this case and all other information described in Federal Rule of Civil Procedure 26(a)(2)(B).

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Please produce all documents evidencing the obligation of any person to indemnify you for any loss or claim related to your activities at the Site, including, but not limited to all insurance policies that might provide coverage for the claims made against you in this case.

Don Dew

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: Please produce all documents relating to all persons with whom you have attempted to settle or have already settled claims arising out of the Site, including but not limited to all correspondence with insurers to whom you have submitted claims relating to environmental conditions at the Site.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Please produce all documents reflecting the identities of all persons or entities, including, but not limited to, customers, who transported Hazardous Substances or Wastes to the Site at any time.

RESPONSE:

1 Interrogatories and Requests for Production dated this 5th day of December, 2002.

2
3 BROWN REAVIS & MANNING PLLC

4
5 By: 

6 Gillis E. Reavis, WSBA #21451

7 Attorneys for Seattle Iron & Metals Corporation

8
9 SIGNED on behalf of Manson Construction Co.

10 By: _____

11 Signature

12 _____
13 Printed Name

14 STATE OF WASHINGTON)

15) ss.

16 COUNTY OF)

17 , being first duly sworn, on oath deposes and says:

18 That is the for the defendant named herein,
19 has read the interrogatories and requests for production contained herein, and the answers and
20 responses thereto; believes the answers and responses to be true and correct; and has not
interposed any answers or objections for any improper purpose, such as to harass or to cause
unnecessary delay or needless increase in the cost of litigation.

21 SUBSCRIBED AND SWORN to before me this day of
22 200__.

23
24 _____
25 NOTARY PUBLIC in and for the State of Washington,
residing at _____

26 My commission expires _____
27
28

_____, attorney for Manson Construction Co., certifies that he/she has read the answers, responses, and objections (if any) to the foregoing interrogatories and requests and, to the best of his/her knowledge, information, and belief formed after a reasonable inquiry they are (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonably or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

By: _____
_____ WSBA # _____

Attorney for Manson Construction Co.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2002, a true and correct copy of the foregoing Interrogatories and Requests for Production was served, via ABC Legal Messenger (for next day delivery), on the following parties:

CARNEY BADLEY SPELLMAN, P.S.


Donald J. Verfurth
700 fifth Avenue, Suite 5800
Seattle, WA 98104-5017

Attorneys for Defendant Manson Construction Co.

DANIELSON HARRIGAN & TOLLEFSON

Terence K. McGee
999 Third Avenue, Suite 4400
Seattle, WA 98104

Attorneys for Defendants Crown Cork & Seal,
Continental Holdings, Peter Kiewit & Sons,
Continental Beverage, Continental Can,
Continental Group


Tricia Churchill

0001
1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
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4

5 SEATTLE IRON & METALS CORPORATION,)
6)
7 Plaintiff,)
8) No.
9 vs.) C02-1158P
10)
11 CROWN CORK & SEAL COMPANY, INC.; CONTINENTAL)
12 HOLDINGS, INC.; PETER KIEWIT SONS, INC.;)
13 MANSON CONSTRUCTION CO.; MAPLE LEAF PROPERTY)
14 MANAGEMENT, INC.; OTHELLO STREET WAREHOUSE)
15 CORPORATION; CONTINENTAL BEVERAGE PACKAGING,)
16 INC.; CROWN BEVERAGE PACKAGING, INC.;)
17 CONTINENTAL CAN COMPANY, USA, INC.; THE)
18 CONTINENTAL GROUP, INC.; CONTINENTAL GROUP,)
19 INC.; and CONTINENTAL CAN COMPANY,)
20 Defendants.)

21 30(b)(6) DEPOSITION OF DANIEL DOLMSETH
22 April 30, 2003
23 Seattle, Washington
24
25

20 BYERS ANDERSON BEACH - COURT REPORTERS & VIDEO
21 2208 North 30th Street One Union Square
22 Suite 202 600 University Street
23 Tacoma, WA 98403-3351 Suite 2300
24 (253) 627-6401 Seattle, WA 98101-4112
25 Fax: (253) 383-4884 (206) 340-1316
1 (800) 649-2034
scheduling@byersanderson.com

0002

APPEARANCES

For the Plaintiff:

Gillis E. Reavis
Jason Kelly
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1201 Third Avenue, Suite 320
Seattle, Washington 98101
206.292.6300
206.292.6301 Fax

For the Defendant Manson Construction Company:

Donald J. Verfurth
Carney Badley Spellman
700 Fifth Avenue, Suite 5800
Seattle, Washington 98104
206.689.4324
206.622.8983 Fax

For Defendants Crown Cork & Seal, Continental
Holdings, Peter Kiewit & Sons, Continental
Beverage, Continental Can, and Continental Group:

Terence K. McGee
Danielson Harrigan Leyh & Tollefson
999 Third Avenue, Suite 4400
Seattle, Washington 98104
206.623.1700
206.623.8717 Fax

EXAMINATION INDEX

EXAMINATION BY:

PAGE NO.

MR. REAVIS
MR. McGEE

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EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	5-page Notice of 30(b)(6) Deposition of Manson Construction Co.	10
2	1-page Site Plan Showing Adjacent Properties.	12
3	1-page oversized Site Plan - Circa 1943.	18
4	27-page Plaintiff Seattle Iron & Metals Corporation's First Set of Interrogatories and Requests for Production of Documents to Defendant Manson Construction Co. and Answers Thereto.	19
5	1-page "Exhibit A" - list of shareholders, Board Members, and Officers.	22
6	2-page Statutory Warranty Deed between Farrells and Manson Construction, dated 8/2/65. Nos. SIMC 006518 and SIMC 006514	23
7	2-page Statutory Warranty Deed between Farrells and Manson Construction, dated 7/31/68. Nos. SIMC 006515 to SIMC 006516	24

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EXHIBIT INDEX

	EXHIBIT NO.	DESCRIPTION	PAGE NO.
1			
2			
3			
4	8	3-page Statutory Warranty	24
5		Deed between Continental	
6		Can Company and Manson	
7		Construction, dated 5/6/69.	
8		Nos. SIMC 006517 to	
9		SIMC 006519	
10			
11	9	5-page Special Warranty	27
12		Deed between Continental	
13		Can Company and Manson	
14		Construction, dated 12/10/82.	
15		Nos. MAN 000249 to MAN 000253	
16			
17	10	3-page Washington State	34
18		Underground Storage Tank	
19		Notification Form.	
20		Nos. ECY 000598 to ECY 000600	
21			
22	11	1-page color copy of aerial	35
23		photograph.	
24			
25			
	12	4-page Lease Agreement	46
		between Manson Construction	
		and Northland Services.	
		Nos. MAN000621 to MAN000624	
	13	4-page Sublease between	51
		Manson Construction and	
		Pacific Terminals Limited.	
		Nos. MAN000593 to MAN000596	

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BE IT REMEMBERED that on Wednesday,
April 30, 2003, at 700 Fifth Avenue, Suite 5800, Seattle,
Washington, at 9:11 a.m., before Karmen Fox, CCR, RPR, CRR,
Notary Public in and for the State of Washington, appeared
DANIEL DOLMSETH, the witness herein;

WHEREUPON, the following proceedings
were had, to wit:

<<<<<< >>>>>>

DANIEL DOLMSETH, having been first duly sworn
by the Notary, deposed and
testified as follows:

EXAMINATION

BY MR. REAVIS:

Q Would you please state your name for the record.

A Daniel John Dolmseth.

Q Mr. Dolmseth, my name is Gil Reavis. I think we just met
for the first time this morning. You understand that you've
been designated as a witness on behalf of Manson
Construction to appear at this deposition today?

A Correct.

Q You understand that you're under oath, sworn to tell the

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1 truth, just as if you're in court testifying before the
2 judge and jury?
3 A Correct.
4 Q If, during the course of this deposition, any of my
5 questions are unclear to you, I'd appreciate it if you stop
6 me and ask me to rephrase it. I'll be happy to do that.
7 Fair enough?
8 A Yes.
9 Q What is your title with Manson Construction?
10 A Right now I'm an assistant to the CFO. I don't have any --
11 Q I'm sorry?
12 A I don't have a formal title. I've been told my -- I should
13 be called special projects. But I have a long history with
14 the company.
15 Q And who is the CFO?
16 A My (b) (6) Richard Dolmseth.
17 Q Let me ask you -- well, the name of your employer is Manson
18 Construction Company?
19 A Correct.
20 Q Some of the documents I saw in the file room referred to
21 Manson Construction Engineering Company. Is that a
22 predecessor, or what's the relationship?
23 A I think there was a name change that was done back in '85 or
24 something like that.
25 Q Same entity, just a name change?

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- 1 A Yes.
- 2 Q When did you first go to work for the Manson company?
- 3 A December of '82.
- 4 Q In what capacity?
- 5 A Chief financial officer. treasurer.
- 6 Q And how about your (b) (6) When did he first go to work
- 7 for the company?
- 8 A He started in March of 1994, somewhere thereabouts.
- 9 Q So did you precede him in the role of CFO?
- 10 A Right. I ended up moving out to Montana and continued then
- 11 in a consulting capacity for several years. It was supposed
- 12 to be a one-year, kind of train my (b) (6) sort of deal, and
- 13 it's been a busy ten years since that happened. So I'm back
- 14 in the employment again.
- 15 Q Can you just describe for me briefly what the nature of the
- 16 business of Manson Construction Company is?
- 17 A Primarily marine construction. And marine construction
- 18 consists of building docks, piers, bridges, wharfs. We're
- 19 also involved in the dredging industry, which is kind of a
- 20 separate segment of the marine construction industry itself.
- 21 We have offices in Seattle, San Francisco, Long Beach, and
- 22 New Orleans.
- 23 Q So are you familiar, then, with the process for obtaining
- 24 permits regarding dredging and filling?
- 25 A Yeah. That's not a specific area of my expertise. And

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1 typically when we do it, most of our work is done with the
2 Corps of Engineers, and they come -- that's their
3 responsibility, to obtain those permits, to make sure that
4 we comply with the stipulations of the permits.

5 Q Okay. I think in your interrogatory answers, there is a
6 reference to Manson International. What is the nature of
7 that company?

8 A It's a wholly owned subsidiary.

9 Q And what sort of business is it?

10 A It's a -- it owns pieces of equipment that -- primarily that
11 leases to Manson. It's had different lives through
12 history -- or different purposes through history, but it's
13 used, I guess, as needed. Initially it was put together for
14 a charter of a vessel to an interest in the Persian Gulf
15 back in 1984. And it was a domestic international sales
16 corporation, or a DISC, D-I-S-C. That's an acronym for
17 something that's a common term, I guess.

18 Q To your knowledge, did Manson International ever have
19 anything to do with the site that we're talking about --

20 A No.

21 Q In this lawsuit today? That's a "no"?

22 A No.

23 MR. VERFURTH: You may want to wait
24 until he finishes his question, even though you know where
25 he's going, because the court reporter has to take both of

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1 you down talking at the same time. Also, you might want to
2 slow down a little bit so the court reporter can get
3 everything.

4 THE REPORTER: Just speak up.

5 Q (By Mr. Reavis) Have you given a deposition before?

6 A Yes.

7 Q Okay. How many times?

8 A Oh, I suppose four or five, something like that.

9 Q Have you ever given a deposition in connection with a case
10 arising out of a contaminated site?

11 A No.

12 Q To your knowledge, has Manson Construction ever been
13 involved in litigation arising out of a contaminated site?

14 A I believe there's one involving Norsk Steamship. And it's
15 something that I have not been directly involved in, but it
16 involves a piece of property over on the peninsula. And
17 that's about the extent that I know about it.

18 Q Is that an ongoing case?

19 A As far as I know. Don could probably tell you more about
20 that.

21 MR. VERFURTH: It's actually Norwegian
22 Salmon.

23 THE WITNESS: That tells you about my
24 involvement.

25 MR. VERFURTH: It's a piece of property

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1 over on Colvos Passage that they used for storage. It's
2 being cleaned up. But there was litigation that was
3 settled.

4 MR. REAVIS: State or federal court?

5 MR. VERFURTH: State -- oh, wait a
6 minute. Federal court in Tacoma.

7 Off the record.

8 (Discussion off the record.)

9 (Exhibit No. 1 marked

10 for identification.)

11
12 Q (By Mr. Reavis) The court reporter has just handed you
13 what's been marked Exhibit No. 1 to your deposition. Let me
14 ask you if you recall having seen that document before.

15 MR. VERFURTH: The copy you probably saw
16 was signed.

17 THE WITNESS: Yeah.

18 A Yeah. There was a bunch of paper that I was going through,
19 but -- yes. I don't know that I reviewed it in detail.

20 Q (By Mr. Reavis) Do you have an understanding of the subject
21 matters that you've been designated to testify about here at
22 the deposition today?

23 A Generally, yes.

24 Q Okay. And as I understand what your attorney told me
25 earlier, that you are prepared to testify about all of the

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1 matters on Exhibit No. 1 except Item No. 2?

2 MR. VERFURTH: And just for
3 clarification, No. 1 is going to be in sort of a background
4 form, and then Mr. Edwards can fill you in more on No. 1, as
5 well.

6 MR. REAVIS: Okay.

7 Q (By Mr. Reavis) Is that a fair summary, then?

8 A Yes. I'll do my best.

9 Q Okay. Now, other than your attorneys, have you discussed
10 your testimony at this deposition with anyone?

11 A No.

12 Q The site that we're here about today is a site that Manson
13 owned down in the Duwamish River. Do you understand that,
14 do you not?

15 A Correct.

16 Q And I'm going to show you some diagrams here in a minute so
17 I can understand exactly what it is that Manson owned over
18 time. But before I do that, I guess I wanted to ask you
19 what you -- how you refer to that particular site. Is there
20 a name Manson has given it?

21 A Over the years, we've called it the Yard 2, because Yard 1
22 is our primary yard on 5209 East Marginal Way. And
23 operationally, we called it Yard 2.

24 Q So 5209 East Marginal Way?

25 A Right. Our main office. And our -- vast bulk of our

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1 operations are conducted out of -- at least as far as the
2 Puget Sound is concerned and historically, prior to moving
3 to California, were done out of our 5209 East Marginal
4 facility.
5 Q So was that the corporate headquarters at one point in time?
6 A It is the corporate headquarters.
7 Q You said there was a move to California?
8 A Right.
9 Q What actually moved to California?
10 A We -- we moved into California and opened offices in San
11 Francisco and Los Angeles.
12 Q But headquarters is still at 5209 East Marginal Way?
13 A Yes.
14 Q What's at that particular location other than offices? Do
15 you have equipment and so forth there?
16 A Yes. We do some, you know, construction staging, materials,
17 load-out. Our machine shop, actually.
18 Q I'm sorry?
19 A Machine shop, construction machine shop.
20 (Exhibit No. 2 marked
21 for identification.)
22
23 Q (By Mr. Reavis) Exhibit No. 2 is a diagram that comes from
24 an environmental consultant's report. What I want to ask
25 you about it concerns the boundaries of the properties that

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1 Manson Construction owned. And I realize that changed over
2 time. But at the time when Manson owned the most property,
3 I would like to ask you whether you can identify for me the
4 boundaries of that property in general terms by reference to
5 streets and so forth.

6 MR. VERFURTH: Before you go further,
7 can I ask a question? There's some cross-out of Parcel A
8 and B. Is that yours or is that -- was that in the --

9 MR. REAVIS: That's on the document
10 itself.

11 MR. VERFURTH: Okay.

12 MR. REAVIS: I don't know if we have a
13 clean copy somewhere.

14 A Gil, tell me what you mean by "most." I mean, what time
15 period?

16 Q (By Mr. Reavis) Well, why don't we say after the purchase
17 of the property from Continental Can?

18 A After the purchase of the property from Continental Can?

19 Q Yes.

20 A Do you want me to grab a pen?

21 Q You can do that, or you can just tell me whether, you know,
22 the streets on here as marked represent the boundaries of
23 the property that Manson owned.

24 A Well, okay.

25 Q Let me just ask it this way: Was the northern boundary of

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1 the Manson property after the Continental purchase South
2 Myrtle Street?
3 A Correct.
4 Q And was the east, 8th Avenue South?
5 A No. Primarily 7th Avenue South, but a portion of it is --
6 very small, what we call a postage stamp -- is 8th Avenue
7 South.
8 Q What about the southern boundary? South Othello? Or was
9 South Othello the boundary to the south?
10 A Yes, just to this segment right here. (Indicating.)
11 Q And then to the west was the Duwamish River?
12 A Right.
13 Q Why don't I give you a highlighter, then, and just ask you,
14 if you would, during that time frame that we were referring
15 to after the Continental purchase, draw, to the best of your
16 recollection, the boundaries of the Manson property?
17 MR. McGEE: If we're going to make
18 copies of that, that highlighter is not going to show up on
19 the copy.
20 THE REPORTER: I can color copy it.
21 MR. McGEE: All right.
22 MR. REAVIS: That solves it.
23 A Right here?
24 Q (By Mr. Reavis) Yes, please.
25 MR. VERFURTH: Last time I tried to use

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1 a yellow highlighter, I didn't realize about the color copy.
2 A And the only amendment that we get into is what we call the
3 Garden Street vacation. That occurred subsequent to the
4 Continental Can acquisition. And that was some property
5 swapping involving King County, Tempress, and ourselves.
6 But I think for what you're asking, that's generally what
7 we're talking about there.

8 Q (By Mr. Reavis) Okay.

9 (Discussion off the record.)

10
11 Q (By Mr. Reavis) So I take it, then, by your markings on
12 this exhibit that Manson never owned this area that's marked
13 "Warehouse Pacific Terminals, Inc."

14 A Correct.

15 Q Let me come back to that.

16 MR. VERFURTH: Do you want to describe
17 what he did for the record? I know we're getting color
18 copies, but --

19 Q (By Mr. Reavis) In fact, why don't -- why don't you just
20 describe for me, then, what the markings you've made on this
21 diagram indicate.

22 A Okay. Beginning in the northeast corner of South Myrtle
23 Street and 7th Avenue South, I moved south along 7th Avenue
24 South and continued past the -- south past the Tempress
25 warehouse, and continued south to the west portion of the

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1 Pacific Terminals facility to South Othello Street. And
2 then I proceeded south -- or excuse me -- west from south of
3 Othello Street to the Duwamish Waterway.

4 Then I proceeded south -- or excuse me -- north along
5 the Duwamish Waterway until approximately the intersection
6 with South Myrtle Street again, and then proceeded east
7 along South Myrtle Street to the point where I began, which
8 was 7th Avenue South.

9 In addition to that, I started on the corner -- the
10 northeast corner of Orchard Street and 8th Avenue, and
11 proceeded south along 8th Avenue to Garden Street --
12 approximately Garden Street, and then proceeded east -- or
13 excuse me -- west along Garden Street for about a quarter of
14 a block, and then went north along, again, parallel to 8th
15 Avenue. And then to South Orchard Street, and then
16 proceeded east to, again, the beginning intersection of 8th
17 Avenue/South Orchard.

18 Q So that last portion sort of puts a box around that portion
19 of the figure that says vacant Parcel D?

20 A Right.

21 Q To your knowledge, was there anything on that Parcel D at
22 the time that Manson owned the property?

23 A No.

24 Q Now, during your employment for Manson Construction, did you
25 have the opportunity to visit this particular site that you

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1 refer to as Yard No. 2?

2 A Yes.

3 Q How frequently would you estimate that you visited that
4 site?

5 A On an inconsistent basis. I would say probably it's best to
6 think of it in terms of years as opposed to maybe regular
7 intervals such as months. I might have been down to the
8 site, in any given year, six times.

9 Q Okay. Do you remember when you would have first visited the
10 site?

11 A When I started with Manson.

12 Q And that was in 1982?

13 A Correct.

14 Q Do you remember whether it was before or after the purchase
15 from Continental Can?

16 A The purchase from Continental Can was a staged purchase.
17 And the closing of the transaction occurred about six months
18 before I got to Manson. It was in June of '82. But
19 Continental Can was not prepared to vacate the property as
20 of the date of closing, and so there was an ongoing lease
21 that occurred for -- for the whole property. I think it was
22 for like six months. And then there was a gradual wind-down
23 for several months after that. They were gradually leasing
24 less of the facility.

25 Q Do you have a recollection about what structures were on the

0018

1 property when you first visited it in 1982?

2 A Yes. My recollection is that this warehouse and office --
3 main office was there. In addition to that --

4 Q And you're referring to Exhibit No. 2 when you say "this
5 warehouse"?

6 A Yes. Exhibit 2.

7 And in addition to that, there was a machine shop that
8 ran east and west along South Myrtle Street.

9 Q If I can stop you there, maybe I can make this a little
10 easier.

11 A Okay.

12 (Exhibit No. 3 marked
13 for identification.)
14

15 Q (By Mr. Reavis) Exhibit No. 3 is also a figure from the
16 environmental consultant's report, which appears to show --
17 well, it's titled "Site Plan - Circa 1943," which has a
18 number of buildings marked on it. Maybe that would help
19 explain what you recall being on the site when it was
20 purchased by Manson. Maybe it won't.

21 And really, all I'm asking for is your best
22 recollection.

23 A Yeah. I'm just trying to -- it's an interesting map. It's
24 different than what I saw some 40 years after this map was
25 put together. So I'm just looking at all that was here.

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1 Anyways, I mean, I can again do the marker thing with
2 this as far as what was here, per my recollection. And I'm
3 trying to sort through some of the -- some of the diagram.
4 Is that what you want me to do, Gil?

5 Q Actually, let me come back to that. I've got some aerial
6 photos that probably are closer in time to that.

7 A Okay. Closer in time to this right here?

8 Q No. Closer in time to when Manson purchased the property.

9 A Okay.

10 Q I'll just come back to those.

11 Do you recall participating in preparing or providing
12 information for Manson's answers to interrogatories in this
13 case?

14 A Yes.

15 Q Let me ask you, then, about some of the names.

16 MR. REAVIS: And I'll just go ahead and
17 mark a copy as an exhibit.

18 (Exhibit No. 4 marked
19 for identification.)
20

21 Q (By Mr. Reavis) Exhibit No. 4 is a copy of Manson's answers
22 to interrogatories in this case. I just want to first run
23 down some of the names of the people who are identified on
24 Page 13.

25 And we've talked about Dick Dolmseth, who is your

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1 (b) (6) correct?
2 A Correct.
3 Q And then yourself. Pat McGarry, who is Pat McGarry?
4 A Pat is one of our vice presidents. And he's largely in
5 charge of the Seattle yard.
6 Q And that would be the Yard No. 1 that you referred to
7 earlier?
8 A Correct.
9 Q Does Manson have other locations in the Seattle area?
10 A No.
11 Q Mr. Edwards, I take it, will be here later today?
12 A Yes.
13 Q Les Hillis, who is Les Hillis?
14 A Les Hillis was in Pat's position prior to his retirement. I
15 want to say 1987, something like that.
16 Q Do you know what information either Mr. McGarry or
17 Mr. Hillis provided in connection with answering these
18 interrogatories?
19 A I don't know with respect to either of those two. I was
20 kind of coordinating through my (b) (6)
21 Q The other name that popped --
22 MR. VERFURTH: Just so you -- actually,
23 Mr. Hillis was only listed as someone that has knowledge. I
24 don't think he necessarily supplied any information for the
25 interrogatories.

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1 MR. REAVIS: Thank you.

2 Q (By Mr. Reavis) The other name that pops up later on is
3 Pete Haug. And what is or was his position with Manson
4 Construction?

5 A Pete was our president and board chairman prior to his
6 retirement in '86.

7 Q Is there anyone, to your knowledge, at Manson Construction
8 Company now who would have been around at the time of the
9 purchase of property in or near this site? And, for
10 example, beginning in the 1960s with the purchase of some of
11 submerged properties. The question is, is there anyone
12 around who is currently at Manson who would have been at
13 Manson during those days?

14 A Glenn.

15 Q Do you know when Pat McGarry first started working for
16 Manson?

17 A Pat started as a towboat man in -- I'm going to say probably
18 late '60s.

19 Q What about Les Hillis?

20 A Les probably started in the late '40s, something like that.

21 Q Is he still in the Seattle area?

22 A As far as I know.

23 Q Mr. Haug, what about his start date?

24 A Pete is the third generation heir, I guess. And Pete
25 began -- he's now 72. And I'm trying to -- he's in Hawaii

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1 now. He started with Manson, I'm sure, when he was a young
2 boy.
3 Q And where is he now?
4 A Hawaii.
5 Q Whereabouts?
6 A Wailua.
7 MR. VERFURTH: Can we take a break for
8 just a second?
9 MR. REAVIS: Sure.
10 (Discussion off the record.)
11 (Exhibit No. 5 marked
12 for identification.)
13
14 Q (By Mr. Reavis) Mr. Dolmseth, let me ask you about what's
15 been placed in front of you by the court reporter, marked
16 Exhibit 5 at the bottom, even though the top of it says
17 Exhibit A.
18 A Right.
19 Q Does that appear to be an accurate list of the shareholders,
20 board members, and officers of Manson Construction?
21 A Yes.
22 Q Is that a current list or does that look like a list that
23 includes people who may have once been in those positions?
24 A Current.
25 MR. REAVIS: So, Don, can we just agree

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1 on the record to substitute this --
2 MR. VERFURTH: Sure.
3 MR. REAVIS: -- in place of your
4 attachments to interrogatories?
5 MR. VERFURTH: Sure. This was the
6 attachment, but now we've added Andrew Paup.
7 Q (By Mr. Reavis) Let me start talking about some of these
8 property acquisitions. And I have some documents to show
9 you.
10 A Okay.
11 (Exhibit No. 6 marked
12 for identification.)
13
14 Q (By Mr. Reavis) Exhibit No. 6 appears to be a statutory
15 warranty deed from (b) (6) to
16 Manson Construction and Engineering Company; is that
17 correct?
18 A Correct.
19 Q Do you recall having seen that deed before?
20 A No.
21 Q Appears to be dated August 1965; correct?
22 A Yes.
23 Q Two-thirds the way down the first page; is that correct?
24 A Correct.
25 Q Do you know what particular property this deed covers?

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1 A No.

(Exhibit No. 7 marked
for identification.)

2

3

4

5 Q

6

7

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9

10 A

11 Q

12

13

14 A

15 Q

16

17 A

18 Q

19 A

20

21

22

23 Q

24

25

(By Mr. Reavis) Exhibit No. 7 also is a statutory warranty deed from the (b) (6) to Manson Construction and Engineering Company, but on the second page appears to be dated -- or at least notarized July 30th, 1968; is that correct?

Correct.

Do you have any knowledge about whether there was an acquisition of two separate parcels from the (b) (6) in the 1960s by Manson?

No.

Okay. Do you know whether or not there would be other parcels that were purchased from the Farrells at any time?

No.

Who would know that at Manson Construction?

Perhaps Glenn.

(Exhibit No. 8 marked
for identification.)

(By Mr. Reavis) Exhibit No. 8 appears to be a deed from Continental Can Company, Inc., a New York corporation, to Manson Construction and Engineering Company. If you look at

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1 the second page, it seems to be dated sometime in 1969,
2 although I have a hard time reading it.
3 Is this a correct statement of what this document is?
4 A Yes.
5 Q Have you seen Exhibit No. 8 before, to your recollection?
6 A No.
7 Q Were you involved at all in any of the negotiations for the
8 purchase of the property from Continental Can?
9 A No.
10 Q As I understand it, that was six months before you joined
11 Manson.
12 A Correct.
13 Q Did you have any sort of business dealings with Manson prior
14 to the date you joined the company?
15 A I was working with Moss Adams as a young CPA, and was
16 involved in some tax -- some audit issues.
17 Q What time period was that? Well, let me strike that.
18 Were you providing the audit and other accounting
19 services to Manson prior to your employment with Manson?
20 A Right. As an employee of Moss Adams.
21 Q And what time period would that have been that you were
22 providing those services to Manson?
23 A 1978 through 1982.
24 Q Let me back up just a little bit, and if you could just give
25 me a brief rundown of your educational background, that

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1 would be helpful.
2 A Graduated (b) (6) went to work
3 for -- undergraduate in (b) (6)
4 (b) (6) dual undergraduate degree. And then went to
5 work for Moss Adams for four years. Was asked to join the
6 Manson team in 1982; went to work for them. (b) (6)
7 (b) (6)
8 (b) (6), I guess it
9 was.
10 Q And what did you do from 1989 forward?
11 A The executive MBA program is a program that allows you to
12 work during the day and go to school at night. So I
13 continued with Manson until 1994, and then left to
14 presumably move to Montana to new frontiers, but those plans
15 changed.
16 Q You're back.
17 A Yeah.
18 Q During the time that you were working for Moss Adams,
19 providing certain accounting services to Manson, did you
20 have any knowledge about this particular site this lawsuit
21 is about?
22 A No.
23 Q Do you know whether these exhibits we've just been talking
24 about, which are 7 -- excuse me -- 6, 7, and 8, combined
25 represent all of the property acquisitions that Manson made

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1 with regard to the site that this lawsuit is about?
2 A Could you ask that question again?
3 Q Yes. I'm trying to figure out whether these exhibits, 6, 7,
4 and 8, constitute the -- or represent the sum total of the
5 acquisitions of property that Manson made with regard to the
6 site this lawsuit is about, in other words, two purchases
7 from the Farrells and one from Continental Can.
8 A Well, the -- I think this statutory warranty deed here --
9 and I haven't seen this document before -- is not with
10 regard to the acquisition of the property.
11 Q That's correct.
12 A It's just a boundary straightening issue.
13 MR. McGEE: Could you identify which
14 exhibit you're referring to?
15 THE WITNESS: Exhibit 8.
16 (Exhibit No. 9 marked
17 for identification.)
18
19 Q (By Mr. Reavis) Let me ask you about Exhibit No. 9. First,
20 do you recall ever having seen that document -- which states
21 that it's a Special Warranty Deed from Continental Can
22 Company to Manson Construction and Engineering Company;
23 correct?
24 A Correct.
25 Q Have you seen that before?

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- 1 A I suspect that I have. I don't have any specific
2 recollection of that.
- 3 Q Do you know whether or not Exhibit No. 9 represents the
4 purchase of the upland portion of the site from Continental
5 Can?
- 6 A Without going through the details of the legal description
7 and what it entails, and against the advice of my counsel, I
8 might reasonably speculate that that's what this is.
- 9 Q So do you think, then, that Exhibits 6, 7, 8, and 9, do
10 those appear to represent the acquisitions by Manson of
11 property at the site this lawsuit is about?
- 12 A One could speculate, Gil, but I would have to -- you know,
13 are there errors of omission and without doing a full title
14 search and knowing what all the parcels are and whatnot, I
15 really can't answer that question.
- 16 Q Do you know if Manson bought property from anybody other
17 than Continental Can and the Farrells?
- 18 A Not to my knowledge.
- 19 Q Is there someone else at Manson who would be more familiar
20 with these particular acquisitions?
- 21 A Glenn.
- 22 Q Do you know who was involved in the negotiations for the
23 purchase of the upland property from Continental Can on
24 behalf of Manson?
- 25 A Pete Haug and Glenn primarily.

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- 1 Q Were you personally involved in the sale of the site, as
2 we've been discussing, to the Othello Street Warehouse
3 Corporation?
4 A Yes.
5 Q And as I understand it, that property, the site was sold to
6 Othello and leased back by Manson.
7 A Correct.
8 Q Can you explain to me what the business purpose for that
9 sale and leaseback was?
10 A Primarily to sell it for the best and highest offer and to
11 provide the purchaser with some income from the property.
12 And the knowledge of the property allows us to be a logical
13 lessor of that property and allows us to close the
14 transaction. Otherwise, I don't think they would have been
15 interested.
16 Q Did Othello ever have any offices or personnel on site?
17 A Not to my knowledge.
18 Q Did they ever, to your knowledge, conduct any operations of
19 their own on site apart from operations of tenants and
20 subtenants?
21 A Not to my knowledge, no.
22 Q I have a bunch of questions about the early fill in the '60s
23 and '70s. I assume that I should talk to Mr. Edwards about
24 that; correct?
25 A Correct.

0030

1 Q Do you have any personal knowledge about those fill
2 operations or why they were done?
3 A No.
4 Q When you first started work with Manson in 1982, do you
5 recall who was operating on the site?
6 A Continental Can.
7 Q Okay. Did Manson have any operations of its own?
8 A No. We may have parked barges, you know, and used it as a
9 mooring site, that sort of thing, along the Duwamish,
10 but...(Pause.)
11 Q And I guess that's part of my question. I'd like for you to
12 explain for me, if Manson is parking barges there, what the
13 purpose for that was and what Manson's personnel or
14 equipment would have been doing on the site after 1982.
15 A It would be primarily, you know, just a place to park our
16 barges when they weren't in use, so on the dock structure
17 that was there, a reasonable accessible mooring site.
18 Q Were you loading and unloading there, was Manson?
19 A No.
20 Q Did you have any personnel on site full-time?
21 A No.
22 Q To your knowledge, was Manson -- or did Manson ever use any
23 aboveground or underground tanks at the site?
24 A No.
25 Q No, they didn't?

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- 1 A They did not.
2 Q Did Manson ever construct any tanks at the site?
3 A No.
4 Q How about removing tanks?
5 A Yes.
6 Q When was that done?
7 A It was approximately 1986, 1987, in that time frame.
8 Q Are there documents that reflect those tank removals?
9 A Not that I'm aware of.
10 Q Did you hire an environmental consultant to do those -- to
11 do the construction or advise you about the environmental
12 regulations at that time?
13 A Not that I'm aware of.
14 Q Who did the actual work of removing tanks?
15 A We did the primary work. We enlisted the help of a backhoe
16 operator to do some digging for us, but that was pretty much
17 the extent of it.
18 Q Do you know if there were any -- strike that.
19 Were these underground tanks?
20 A Yes.
21 Q Do you know whether any paperwork was filed with the
22 Department of Ecology regarding the removal or closure of
23 those tanks?
24 A Not that I'm aware of.
25 Q Is there someone at Manson who would have responsibility for

0032

1 that type of paperwork process concerning underground tanks?
2 A We would defer that to our law firm. But at the time, I'm
3 not sure that -- even what regulations existed at the time.
4 But you're talking to the guy who would have been involved,
5 and if nothing else, to refer to our attorneys. But the
6 mind-set at that time, I don't think there was a level of
7 awareness that there is today.
8 Q At the time that you were referring to, then, in '86-'87
9 time frame, did Manson have any sort of environmental
10 compliance officer?
11 A No.
12 Q Does Manson currently have such a person?
13 A Yes.
14 Q Who is that?
15 A Pat McGarry.
16 Q Okay. He's been with the company for some time; correct?
17 A Yeah. It's -- there's -- within our company structure -- or
18 organization, you know, we have a very important operational
19 component on our union side, and Pat was in that. And
20 again, came over to the management side -- I'm going to say,
21 you know, the -- you'd have to ask Pat -- early '80s or
22 something like that, and worked as an assistant out back.
23 Q Now, with regard to documents relating to those tank
24 removals, is it your testimony that there are no such
25 documents, or you just don't know?

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1 A I don't know of any documents.
2 Q Have you made any sort of search for those documents?
3 A Yes. I mean, we searched for all documents in responding to
4 the interrogatories. And if there were such documents,
5 you're talking to the guy that would have been involved in
6 that. And I'm not aware of any documents, either request
7 and/or a need for those documents.
8 Q To your knowledge, why were those tanks removed?
9 A We were trying to clean up the yard a little bit, I guess
10 the best way to put it, to make it more usable for our
11 primary tenant, which was Northland Services.
12 Q Do you recall how many tanks there were?
13 A I think there were three.
14 Q And do you recall the locations of those tanks?
15 A I have a general understanding of where they are.
16 Q Let me ask you to refer to Exhibit No. 2, which is this one
17 right here. The smaller one, actually.
18 A Yeah.
19 Q There are some dotted lines on that diagram, indicating
20 tanks. Some say UST, some just say diesel tank, and so
21 forth. Can you tell me whether anything on Exhibit No. 2
22 appears to be in the same location of the tanks that were
23 removed by Manson?
24 A Yeah. The -- I would speculate here that the 12,000-gallon
25 heating oil UST was one -- 1,250-gallon diesel tank was one.

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1 And although I don't remember the location of this other one
2 being up so far to the east. The heating UST, the small one
3 up there, as well.
4 Q So do you think there were two heating oil tanks removed?
5 A Yes.
6 Q And the third one, would that have been some other type
7 of --
8 A A diesel tank.
9 (Exhibit No. 10 marked
10 for identification.)
11
12 Q (By Mr. Reavis) Let me ask you to refer to Exhibit No. 10,
13 and tell me if you recall ever having seen that document
14 before.
15 A No.
16 Q There's a signature at the bottom of the first page on the
17 right, Joseph Tarlo; correct?
18 A Correct.
19 Q Was he an employee of Manson at the time?
20 A First time I've ever seen the name.
21 Q Mr. Edwards is also referred to as the general manager on
22 the bottom left; correct?
23 A Yes.
24 Q Do you have any way to tell whether the tank -- or tanks
25 that are referred to on Exhibit No. 10 are the same that you

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1 were discussing having been removed by Manson?

2 A Yeah, I can't really say. One could speculate, but, again,
3 without knowing the location of what these tanks
4 are...(Pause.)

5 Q Do you believe Mr. Edwards would have more information about
6 this subject?

7 A Possibly.

8 Q Okay.

9 (Exhibit No. 11 marked
10 for identification.)

11
12 MR. REAVIS: Off the record for just a
13 second.

14 (Discussion off the record.)

15
16 Q (By Mr. Reavis) Let me ask you about Exhibit No. 11, which
17 is an aerial photograph that was apparently taken in 1980,
18 although I'm not asking you to verify that. Can you tell me
19 whether the structures on the site that we've been
20 discussing as reflected on Exhibit No. 11 appear to be
21 similar to what you observed on the site when you first
22 started with Manson in 1982?

23 A Yes. I'm having some fun reflecting back.

24 Q Let me ask you about one particular area of this exhibit.

25 And if I can kind of reach over here and point to a portion

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1 of the site that I believe, if you orient the photograph,
2 would be in the northwest corner of the site.
3 A Okay.
4 Q Is that correct --
5 A Correct.
6 Q -- where I'm pointing here? Just adjacent to the exhibit
7 sticker.
8 There appear to be some round structures or something
9 right next to the water there. Do you see where I'm
10 indicating?
11 A Mm-hm. Yes.
12 Q Do you have any recollection of what those round structures
13 would have been?
14 A No.
15 Q To your knowledge, was there ever any fueling done of
16 vessels from this site?
17 A No.
18 Q No, there wasn't?
19 A To my knowledge, there wasn't.
20 Q Are you aware of any fuel storage at any time at this site
21 other than with regard to the underground storage tanks on
22 the site?
23 A No.
24 Q In 1982, do you recall how much of this site was paved?
25 A Vaguely. I mean, I don't know how much -- paved, I guess,

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1 is a relative term. I've got buildings that I have some
2 flooring in them, and one could call that paving or one
3 could call that flooring. So that's my hesitation in
4 answering your question.
5 Q Let me exclude insides of buildings, and just the area where
6 the vehicles move, park, so forth. Do you recall whether
7 that was, you know, bare dirt or there was some sort of
8 asphalt or paved material?
9 A There was an awful lot of dirt out there.
10 Q Do you recall how much truck traffic was going in and out of
11 this site in and around 1982?
12 A No.
13 Q Do you think Mr. Edwards would be more familiar with the
14 operations of this particular site than you would be?
15 A In 1982?
16 Q Yes.
17 A Probably.
18 Q How about later? Was he more of an operational person as
19 opposed to a financial person?
20 A Yes.
21 Q To your knowledge, was there ever any maintenance of
22 vehicles performed on this site?
23 MR. VERFURTH: Would you read the
24 question, please?
25 /////

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(Question on Page 37, Lines 21
through 22, read by the
reporter.)

1
2
3
4
5 A No.
6 Q (By Mr. Reavis) Let me ask you to refer to Exhibit No. 2
7 again. There's some areas that are in what appear -- what I
8 would describe as the southwest corner of the site. One of
9 them has an arrow pointing to a rectangle, and the legend
10 there says "vehicle washing area." Do you see where I'm
11 talking about?
12 A Okay. On the southwest corner --
13 Q Right.
14 A Oh, okay.
15 Q Do you have any knowledge about any washing of vehicles in
16 that location?
17 A No.
18 Q What about a washwater treatment system? Does that ring a
19 bell with you?
20 A No.
21 Q Do you know whether, during Manson's tenure at this site,
22 there was a station there for washing out vehicles?
23 A No.
24 MR. VERFURTH: Gil, while you're looking
25 for whatever you're looking for, would this be a good time

0039

1 to take a break?

2 MR. REAVIS: Actually, yeah, it would
3 be.

4 (Recess 10:15 - 10:38 a.m.)
5
6

7 EXAMINATION (Continuing)

8 BY MR. REAVIS:

9 Q Now, before the break, we were talking about some
10 underground tanks that were removed. Do you remember that
11 discussion?

12 A Yes.

13 Q They were removed by Manson?

14 A Correct.

15 Q And I believe what you said is, your recollection was, there
16 were two heating oil tanks and one diesel tank.

17 A Yeah. I -- the specific makeup of it, Gil, I'm not sure.

18 But I -- one large tank and two smaller tanks is how I refer
19 to it.

20 Q And the large tank was a heating oil tank?

21 A Yeah, I'm not -- again, not sure what the purpose of the
22 large tank was. It may have been. I just -- you're asking
23 a specific question, and I -- I'm not sure what its purpose
24 was. It was involved presumably in the Continental Can
25 operations. And what they used that tank for is -- I guess

0040

1 you'd have to ask them.

2 Q Okay. But it's your testimony that Manson never used any of
3 the tanks that may have been on site?

4 A Correct.

5 Q Other than these three that you were talking about earlier,
6 during the period in which Manson owned this property, was
7 Manson ever, to your knowledge, aware of any other tanks?

8 A No.

9 Q Okay. Let me ask you some questions about the tenants that
10 Manson had, or subtenants. And let me first start --

11 MR. VERFURTH: Before you go on, can we
12 go off the record for a second?

13 (Discussion off the record.)
14

15 Q (By Mr. Reavis) So then let me start with the tenants with
16 Continental Can, because Continental Can leased the property
17 from Manson for a time after Manson acquired it from
18 Continental; correct?

19 A Correct.

20 Q Can you tell me what you recall about what Continental's
21 operations were at that time on site?

22 A Winding down. Removing largely -- mobilizing whatever they
23 had there and liquidating whatever they had there.

24 Q Do you know if they had any sort of manufacturing operations
25 ongoing at that time?

0041

- 1 A No.
- 2 Q No, they didn't, or, no, you don't know?
- 3 A My first walk-through of the site, there was no
- 4 manufacturing activity going on. It was largely vacated.
- 5 Q Were there any machine shop operations that you recall?
- 6 A No.
- 7 Q How many people did they have on site, to the best of your
- 8 recollection?
- 9 A I saw a few men that were involved, again, in either
- 10 cannibalizing or raiding large pieces of equipment that had
- 11 either been sold or were being moved to some other site.
- 12 But that sort of stuff.
- 13 Q To the best of your recollection, did Manson buy not only
- 14 the real property but whatever fixtures and equipment might
- 15 have been left by Continental?
- 16 A Yes.
- 17 Q And did you liquidate some of that equipment somehow?
- 18 A I don't remember any specific sales. You know, not things
- 19 that would be of any material use to Manson's operations
- 20 there was there. It's a completely different business.
- 21 Q And I think your interrogatory answers refer to demolition
- 22 of certain structures that were on site, demolition by
- 23 Manson.
- 24 A Correct.
- 25 Q Can you tell me what you recall -- or what structures you

0042

1 recall having been demolished by Manson?
2 A Probably easier just to say, we left standing the main
3 office, and attached to that, the warehouse that runs north
4 and south along 7th Street here. Right here. (Indicating.)
5 This warehouse and office structure within there is what we
6 saved. The rest of it was torn down.
7 Q Okay. Let me ask you to refer to Exhibit No. 2. It may be
8 easier to identify which area you're talking about.
9 A Okay.
10 Q Is that the area that's just to the west of 7th Avenue
11 South, just to the south of South Myrtle Street, that's
12 labeled office and warehouse, that building?
13 A Correct.
14 Q So that's the only structure from the Continental buildings
15 that Manson left standing?
16 A Correct.
17 Q Now, who actually performed the demolition of all the other
18 buildings?
19 A We -- Manson was involved, and we also used a subcontractor
20 that we have used on prior -- previous projects, demolition
21 contractor by the name of Rhine.
22 Q By the name of what?
23 A Rhine, R-H-I-N-E.
24 Q Are there any records, to your knowledge, about that
25 demolition or any of the disposition of the material after

0043

- 1 the demolition?
- 2 A No.
- 3 Q Do you know whether there was any contamination -- and I'm
- 4 talking about soil contamination first -- that was observed
- 5 during the demolition process by anyone at Manson?
- 6 A No.
- 7 Q Who at Manson would have been the person in charge of
- 8 accomplishing that demolition?
- 9 A Probably Pat McGarry.
- 10 Q Do you recall what time frame the demolition occurred in?
- 11 A It was '86, '87, in that -- probably more in the '86 frame.
- 12 Might have been maybe late '85.
- 13 Q What was going on in those buildings between 1982 and 1986
- 14 or '87, the ones that were ultimately demolished?
- 15 A Not -- what was going on in those buildings? The buildings
- 16 that were demolished, nothing, that I'm aware of.
- 17 Q Okay. During that time period between '82 and '86 or '87,
- 18 do you recall any of your tenants operating any sort of
- 19 businesses within those buildings that were ultimately
- 20 demolished?
- 21 A No. I think it might have been '85, '86. I'm not sure it
- 22 went into '87. But it's in that general time period, 15, 16
- 23 years ago.
- 24 Q Do you know the names of any of the folks at Rhine, the
- 25 demolition subcontractor?

0044

1 A No.
2 Q Who would have had dealings with Rhine?
3 A Probably Pat.
4 Q Let me ask you about other tenants besides Continental. Do
5 you recall who your first tenant was at this site, excluding
6 Continental?
7 A Royal Machine was a small, I think, office machines broker
8 or something like that. They had a small office space that
9 was located in the bulk of offices here. (Indicating.) And
10 they were a tenant for -- they might have had a thousand
11 square feet of office space they were leasing from us. And
12 they were a tenant for a couple of years, anyways.
13 Q Now, is that in the building that we previously identified
14 as office warehouse?
15 A Yeah. And if your question is specifically to the
16 demolished buildings, I'm not aware of any tenants.
17 Q Let me ask you, then, you know, not limited to the
18 demolished buildings. I take it that what you're saying is,
19 the first tenant you had other than Continental was Royal,
20 and then Royal had offices in that office warehouse
21 building?
22 A They were a carryover of Continental Can, a tenant of
23 Continental Can. And again, they just assumed their -- the
24 continuation of their operations there. And it was for a
25 short period of time.

0045

1 Q And you said they were an office machine broker?
2 A Yeah, as I remember. It was an office-based business, and I
3 think it was probably just a location, Royal Machine. And
4 it was -- that was my recollection.
5 Q So no manufacturing?
6 A No.
7 Q No fueling or anything of that nature?
8 A No.
9 Q Were there any other holdover tenants from the Continental
10 Can years?
11 A No.
12 Q Was there a written lease with Royal that was assigned to
13 you as part of the transaction with Continental?
14 A May have been. You know, I'm not even sure that we might
15 have even gotten a lease document from them. It
16 was...(Pause.)
17 Q What was Northland Services? They're listed in your
18 interrogatory answers as a tenant. Can you tell me, first
19 off, what sort of business they were in?
20 A Northland is in the tug and barge business. And their
21 primary market is hauling various forms of bulk and/or
22 containerized cargo from Seattle on up to Alaska. And
23 they -- at the time, their primary operations were based out
24 of the north part of Lake Washington, Kenmore, right up
25 there by Kenmore Air. And they eventually moved down to the

0046

1 Duwamish.

2 But they began a tenancy with us just in the form of
3 office space. And so there was -- the second -- the second
4 floor of the office was leased to Northland after some
5 substantial tenant improvements were done.

6 Q Did they ever run tugs and barges in and out of the dock at
7 the site we're talking about today?

8 A Yes.

9 (Exhibit No. 12 marked
10 for identification.)
11

12 Q (By Mr. Reavis) Does Exhibit No. 12 appear to be a copy of
13 a lease agreement between Manson and Northland Services,
14 Inc.?

15 A Correct.

16 Q And this one is dated January 9th, 1987, is it not?

17 A Correct.

18 Q Is that consistent with your recollection about when
19 Northland first leased any portion of the site from Manson?

20 A Yes. Also helps me recall that the demolition was probably
21 more in the late '85, '86 time period. And Northland
22 started the lease in January of '87.

23 Q Do you recall how long Northland leased a portion of this
24 site from Manson?

25 A I'm going to say all the way -- well, until late -- or --

0047

- 1 '96, '97, somewhere thereabouts.
- 2 Q During that time period, what is your recollection about the
- 3 nature of the operations that Northland performed on this
- 4 site, apart from the office lease?
- 5 A Primarily barge loading. There was some off-loading of
- 6 return freight, but primarily barge loading and
- 7 containerized and bulk cargo onto barges that were then
- 8 towed up to Alaska on a routine, slash, repeat basis.
- 9 Q Was there a certain portion of the property that was leased
- 10 exclusively to Northland for those purposes?
- 11 A Yes. Pretty much on your Exhibit 2, the area north of
- 12 this -- I'm not sure what this indicates here in the legend.
- 13 But this line with the Xs on it.
- 14 Q So north of South Garden Street?
- 15 A Correct.
- 16 Q All the way up to Myrtle Street?
- 17 A Correct.
- 18 Q Which includes, at least on this diagram, a crane along the
- 19 waterfront; correct?
- 20 A Correct.
- 21 Q And is that -- was that used by Northland for loading and
- 22 unloading their barges?
- 23 A Yeah, I think so. I don't recall ever seeing the crane
- 24 operated, but I suspect that it was used for that on an
- 25 as-needed basis.

0048

- 1 Q Do you know --
2 A It's not a stout crane. You can't lift massive quantities.
3 Q Could it handle the containers that they were bringing in?
4 A Possibly. Depends, I suppose, on what's in the container.
5 Q Okay. Who would know more about what equipment and other
6 facilities Northland used on site, other than folks at
7 Northland?
8 A Pat and Glenn.
9 Q Do you know whether Northland ever had any tanks, pipelines,
10 or other structures for the purpose of fueling tugs?
11 A No.
12 Q On this site, is my question.
13 A Yeah, no.
14 Q So you don't believe there were any?
15 A No.
16 MR. VERFURTH: Let's make the
17 question -- I think we've got too many negatives. Do you
18 want to re-ask the question?
19 MR. REAVIS: Yeah.
20 Q (By Mr. Reavis) Did Northland, to your knowledge, ever have
21 any tanks, pipelines, or other structures for the purpose of
22 fueling tugs at this site?
23 A No.
24 Q Any facilities that you're aware of for the purpose of
25 disposing of bilge water on site?

0049

- 1 A No.
- 2 Q Are you aware of any disposal of bilge water on the upland
- 3 portion or the fill portion of this site ever?
- 4 A No.
- 5 Q How were these containers moved on and off site by
- 6 Northland?
- 7 A Truck.
- 8 Q Did they operate their own trucks?
- 9 A I don't believe so.
- 10 Q Did they ever ship any out by rail?
- 11 A Possibly.
- 12 Q Was there a rail line operating on this site during Manson's
- 13 period of ownership?
- 14 A That's the -- I'm struggling with my memory. I don't recall
- 15 ever seeing a railcar down on the spur. I'm trying to
- 16 recall where the spur ended.
- 17 I'm going to say no, because the rail spur is not
- 18 there.
- 19 Q But you don't recall any railcars going in and out of the
- 20 site for the purpose of moving material?
- 21 A No.
- 22 Q Do you ever recall any instance during the Northland lease
- 23 when there was some sort of event that would have caused a
- 24 spill of petroleum or any other substance onto the site?
- 25 A No.

0050

- 1 Q Do you have any knowledge that any of the activities of
2 Northland caused any soil or groundwater contamination at
3 this site?
4 A No.
5 Q Next tenant listed in your interrogatory answers is Mega
6 Terminals, also known as Pacific Terminals.
7 A Correct.
8 Q Can you describe for me what their business was, relating to
9 this particular site?
10 A Pacific Terminals, Mega Terminals, Norsk Pacific Steamline
11 was primarily involved in the -- what we called the paper
12 business. And they were involved in barging paper down from
13 primarily Canada, from their paper mills, newsprint, that
14 would come to this -- to our yard. And they would load and
15 off-load at the dock that is, on this diagram, running along
16 the southwest -- the western portion -- the southern portion
17 of the western boundary line.
18 There's a dock, this area right here (indicating) with
19 the crane. And that -- paper barges would come into that
20 site and park, and then would be off-loaded and transported
21 into this warehouse. And then they would be moved from the
22 warehouse by trucks and/or -- there's a rail spur that runs
23 right alongside this building -- by rail to various
24 newspapers throughout the western United States.
25 Q Let me ask you to refer to Exhibit No. 2, which has a

0051

1 warehouse labeled on it just north of Othello Street. It
2 says warehouse, Pacific Terminals, Inc. Do you see that?
3 A Yes.
4 Q Is that the warehouses that you were referring to that they
5 would off-load their paper shipments to?
6 A Correct.
7 Q And that was on property that was not owned by Manson;
8 correct?
9 A Correct.
10 Q Do you recall when Pacific Terminals -- what should I call
11 them? Pacific? Mega?
12 A Pick whatever you want.
13 Q I'll call them Pacific Terminals. Do you know when they
14 first started leasing any portion of the site from Manson?
15 A It was early on, as well, Gil. I'm going to say not long
16 after we acquired the property from Continental Can, for
17 the -- just the simple reason that they had to have access
18 to the waterfront to unload their paper barges into the
19 warehouse.
20 Q So they had to cross --
21 A Right.
22 Q -- your property in order to unload?
23 A Yes.
24 (Exhibit No. 13 marked
25 for identification.)

0052

- 1 Q (By Mr. Reavis) Does Exhibit No. 13 appear to be a sublease
2 between Manson and Pacific Terminals?
3 A Yes.
4 Q And this one is dated, on the first page, July 26, 1990, but
5 effective November 1st, 1988; is that correct?
6 A Correct.
7 Q Can you explain for me what the discrepancy was there in the
8 dates?
9 A You know, I can't. I don't know. It may have been -- the
10 other one may have been lost. I don't know.
11 Q Do you know whether Pacific Terminals, Ltd., first started
12 leasing property at this site from Manson in or about
13 November of 1988?
14 A Ask me that question again.
15 Q Do you know whether Pacific Terminals, Ltd., first started
16 leasing property at this site in or about November 1st,
17 1988?
18 A Yeah. It may have been November 1st, 1988, but I think this
19 date, you know, coincides with the sale and leaseback of the
20 property from Othello. And so this was a, you know,
21 document that was put in place effective November 1st, 1988,
22 as a sublease as opposed to as a lease.
23 Q Okay. So the sale to Othello occurred in October of 1988?
24 Is that your recollection? Or November 1st, 1988?
25 A Yeah. October 31st of '88, coinciding with this agreement.

0053

- 1 Q Is it your recollection that Pacific Terminals was leasing
2 property from Manson prior to the time when Manson sold the
3 property to Othello?
4 A Correct.
5 Q Do you know if there was a written lease at that time?
6 A Yes.
7 Q Do you recall what the -- or when Pacific Terminals first
8 started leasing property from Manson?
9 A I'm going to say soon after we acquired the property from
10 Continental Can, to gain access to their warehouse. And
11 whether it's Pacific Terminals, Mega Terminals, I guess we
12 used those terms interchangeably.
13 Q Well, I guess my question, though, is, was Pacific Terminals
14 operating at this site, across this site, during the time
15 that Continental Can owned the property?
16 A Yeah, in some form or another. Like I said, as long as I've
17 known about this, that there's been paper moving into that
18 warehouse and that translocated to newspaper sites, and it
19 seems to me that that was there at the time that we first
20 became -- or we first became owners of the Continental Can
21 property.
22 Q So the best of your recollection, then, whenever Manson
23 purchased the property from Continental, you entered into
24 some sort of a lease agreement with Pacific Terminals?
25 A Correct.

0054

1 Q And then Exhibit No. 13 is a sublease that was entered into
2 after the sale of the property to Othello?

3 A Correct.

4 Q Do you recall how Pacific Terminals moved this paper off
5 site?

6 MR. VERFURTH: When you say "off site,"
7 do you mean off Manson's site or Othello's site?

8 MR. REAVIS: Good question.

9 MR. VERFURTH: And not their own site?

10 Q (By Mr. Reavis) Let me break it down. You know, from the
11 point at which the material was off-loaded from barges until
12 it was transferred into the Pacific Terminals warehouse, do
13 you know what sort of conveyance was used for that transfer?

14 A Primarily they had these little tractors, miniature
15 tractors, that would haul carts. And then, you know, they
16 had as many as three, four carts behind the miniature little
17 tractors. And the paper barges would come in full of these
18 large rolls of paper, and they would be put onto these carts
19 and then moved, you know, the short distance to the
20 warehouse via a ramp, and directly into the warehouse, where
21 they were off-loaded with forklifts. And then they were
22 stacked and sorted, and then trucks would come, carry them
23 off to their newsprint site.

24 Q Let me ask you to refer to Exhibit No. 2 again, which is the
25 site diagram.

0055

- 1 A Okay.
- 2 Q Do you have any knowledge at all about who would have
- 3 operated the vehicle washing area or the washwater treatment
- 4 system that are operated on Exhibit No. 2?
- 5 A Probably would have been Pacific Terminals.
- 6 Q Do you know what sort of vehicles they would have been
- 7 washing in that area?
- 8 A Just the little tractors that we're talking about. I
- 9 believe that they were propane operated, used exclusively
- 10 for transporting those carts into the warehouse. I'm not
- 11 aware of any other vehicles that they had. The trucks here
- 12 were independent truckers that would come and pick up the
- 13 warehouse -- or pick up the goods.
- 14 Q Let me see if I can summarize, then. You believe that the
- 15 only vehicles that were used by Pacific Terminals for moving
- 16 the material from the barges into the warehouse were these
- 17 small propane-powered vehicles?
- 18 A Right.
- 19 Q Do you know if they ever used diesel-powered vehicles in
- 20 that area?
- 21 A No.
- 22 Q No, they didn't?
- 23 A I'm not aware of any.
- 24 Q Do you know whether Pacific Terminals ever had any fuel
- 25 storage facilities on site?

0056

- 1 A No.
- 2 Q Maybe I've got to quit asking the question that way. Did
- 3 Pacific Terminals ever have any fuel storage facilities on
- 4 site?
- 5 A No.
- 6 MR. VERFURTH: And you mean on Manson's
- 7 site, on the site that we've identified here?
- 8 MR. REAVIS: Correct.
- 9 Q (By Mr. Reavis) Is Pacific Terminals still operating this
- 10 warehouse, to your knowledge?
- 11 A To my knowledge. I haven't been down there in a long time.
- 12 Q Can you show me on Exhibit No. 11 where Northland's tugs and
- 13 barges would have operated? I'm backing up to Northland
- 14 now.
- 15 A Yeah. Right along the northern part of the westerly border
- 16 on the Duwamish.
- 17 Q Okay. So were there -- two separate docks?
- 18 A There's another dock that exists that's right in this area
- 19 (indicating) now, right along here.
- 20 Q Let me just see if I can get an explanation of Exhibit
- 21 No. 11, because toward the southern end of the property,
- 22 which appears to be south of Garden Street, it looks like
- 23 there's a crane next to the water; correct?
- 24 A Correct.
- 25 Q And that's the one that was used by Pacific?

0057

- 1 A Yes.
- 2 Q And would it be Pacific barges that would off-load in that
- 3 area to the south of Garden Street, or would Northland have
- 4 used that area, as well?
- 5 A Pretty much just Pacific.
- 6 Q Okay.
- 7 A It wasn't their barges in the ownership sense, but barges
- 8 that were used in their business.
- 9 Q Okay. Now, a similar question with regard to the area of
- 10 the -- the dock area north of Garden Street. Would
- 11 Northland have run its tugs and barges in and out of the
- 12 area north of Garden Street only?
- 13 A Correct.
- 14 Q Okay. The next tenant identified in your interrogatory
- 15 answers is -- we've already covered Royal Machine --
- 16 Tempress. Can you tell me what they did?
- 17 A Tempress was a company that manufactured -- or is, I
- 18 believe, a company that manufactured plastic components.
- 19 And they made those plastic components through a process of
- 20 injecting -- injection molding.
- 21 Q Did they do any of that manufacturing on this site?
- 22 A Tempress?
- 23 Q Yes.
- 24 A To my knowledge, yeah. That's what they did in this
- 25 building. (Indicating.)

0058

1 MR. VERFURTH: I'm going to ask you to
2 clarify "this." He's pointing to a building off site, I
3 believe.

4 THE WITNESS: Yeah.

5 MR. REAVIS: Let me see if I can clarify
6 that.

7 Q (By Mr. Reavis) On Exhibit No. 2, the area on the western
8 portion of the site that you have outlined in yellow --

9 A Okay.

10 Q -- did Tempress conduct any operations in that area?

11 A No. I apologize for misunderstanding your question
12 previously. It was -- they leased a small area just to
13 store miscellaneous stuff used in their warehouse
14 operations.

15 Q And that would have been obviously an area to the west of
16 the yellow line there --

17 A Correct.

18 Q -- adjacent to their building?

19 A Yes.

20 Q Are you aware of any -- backing up again to Pacific
21 Terminals. Are you aware of any instances during which
22 petroleum or any other substance was released to the ground
23 by Pacific Terminals on the property leased from Manson?

24 A No.

25 Q So no spills that Manson was aware of, to your knowledge,

0059

1 caused by Pacific?

2 A Correct.

3 Q Was there ever, to your observation, any visible staining of
4 the soil in the area where this vehicle washing was
5 performed?

6 A No.

7 Q Let me ask you to look at Exhibit No. 11 to the west of the
8 Pacific Terminals warehouse. There appears to be some
9 vehicles parked out there. Is that -- am I correct about
10 that?

11 A Yes.

12 Q Those little red things, are those the vehicles that you
13 were referring to earlier?

14 A Yeah. This is 1980, and so I -- if I was to look at those
15 vehicles and speculate --

16 THE WITNESS: Sorry, Don.

17 A -- on what those are, those appear, to me, to be trucks.

18 Q (By Mr. Reavis) To your knowledge, did Pacific ever park
19 trucks in that area to the west of the Pacific Terminals
20 warehouse?

21 MR. VERFURTH: At any time?

22 MR. REAVIS: Yes.

23 A No. And I guess in looking at the color red and directly to
24 the south of that warehouse is Puget Sound Freight Lines,
25 which is a large tug and barge -- or at the time, a large

0060

1 tug and barge operation, and so --

2 THE WITNESS: And I apologize, Don.

3 A But I could speculate even further that that was Puget Sound
4 Freight Lines' operation out of that warehouse.

5 Q (By Mr. Reavis) Did Manson ever lease any of its property
6 to Puget Sound Freight Lines?

7 A Not that I'm aware of.

8 Q Do you know whether they ever parked trucks on Manson's
9 property during the period of Manson's ownership?

10 A No, not that I'm aware of.

11 Q Do you know whether they ever parked trucks on that portion
12 of the property to the west of the Pacific Terminals
13 warehouse during Continental's period of ownership?

14 A I would say I don't know. Again, one might speculate that
15 that's what we're looking at in this photograph.

16 Q Do you recall ever having seen any sort of lease between
17 Continental Can and Puget Sound Freight Lines regarding the
18 parking of trucks in that area to the west of the Pacific
19 Terminals warehouse?

20 A No.

21 Q Now, are you aware of anything that Tempress ever did at
22 this site to cause any sort of contamination of soil or
23 groundwater at the site?

24 A No.

25 Q I may have asked you this already, and if I did, I

0061

1 apologize. Did Manson ever load or unload any barges at
2 this site of its own, or barges that were utilized for
3 Manson's business?

4 A Not that I'm specifically aware of. And probably a question
5 better for Glenn.

6 Q Okay. Do you know whether Manson ever utilized either of
7 the cranes that were shown on these diagrams?

8 A Not that I'm specifically aware of. One could speculate,
9 but it would be a waste of our time.

10 Q Maybe Glenn could tell us without speculating?

11 A Yeah.

12 MR. REAVIS: That's all I have for now.

13 Thanks.

14 THE WITNESS: You bet.

15
16
17 EXAMINATION

18 BY MR. MCGEE:

19 Q Mr. Dolmseth, we met earlier this morning, but to be formal,
20 my name is Terry McGee, and I represent Continental Can or
21 its successors -- and its successors. Let me put it that
22 way. As I think the lawyers here know, it's our position
23 that the real party in interest at this point in time would
24 be Crown Beverage Packaging. So that's what I'm saying I'm
25 representing here.

0062

1 With respect to Exhibit No. 11 -- and just so you
2 don't think I'm rude, I've already asked Mr. Reavis if it
3 would offend him, and he says no. Could you please take a
4 yellow Magic Marker and, on Exhibit 11, outline the Manson
5 parcels just like you did on Exhibit No. 2.
6 A Okay. Do you want me to do it on the exhibit?
7 MR. REAVIS: Is it going to show up?
8 THE WITNESS: I want to make sure I
9 don't mark the table here. This is a laser printer?
10 MR. REAVIS: Yes.
11 THE WITNESS: It kind of goes like --
12 the little Garden Street vacation I was telling you about, a
13 wonderful vacation spot.
14 MR. REAVIS: A garden.
15 MR. VERFURTH: They do call New Jersey
16 the Garden State.
17 A Something like that. This is the part that was vacated.
18 Q (By Mr. McGee) Okay. Understanding that's just your best
19 shot right now, I'm not going to try to hang you if it turns
20 out you're a millimeter off one way or another.
21 A Sure.
22 Q Now, looking at both Exhibit No. 11 and Exhibit No. 2 to
23 these, and as you've pointed out, Exhibit No. 11 was -- says
24 it was photographed in 1980. And we can see on Exhibit
25 No. 2 that there's a date there of 1996, in the lower

0063

- 1 right-hand corner where it says Hart-Crowser.
2 A Okay.
3 Q So on 11, looking at the crane you identified there in the
4 southwest corner as having been used by -- I believe you
5 said Pacific Terminals; correct?
6 A Correct.
7 Q Okay. Now, on Exhibit 2, there's another crane shown to the
8 northwest, right along the river.
9 A Correct.
10 Q Okay. Which, to my eye, looks like that crane would be in
11 what was on Exhibit 11 an unfilled space there. In other
12 words, there's water there in Exhibit 11; right?
13 A Yes.
14 Q When Manson acquired this property from Continental Can, did
15 it look, to your recollection, more or less like it shows in
16 Exhibit No. 11?
17 A Yeah, I'm going to say that the crane that is in Exhibit 2
18 had been installed by the time I came on the scene.
19 Q All right. Had that area that -- are you familiar with the
20 term "dolphin"?
21 A Correct.
22 Q Okay. Is that a line of dolphins that runs out there in the
23 northwesterly direction along where those barges are moored?
24 A I would speculate that's what it is.
25 Q So looking at what appears to be water on the landward side

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1 of that string of dolphins, had that been filled by the time
2 you showed up?
3 A Yes. It wasn't all filled. There's a portion north of the
4 dock in Exhibit 11 that remained unfilled. And then the
5 dock was inserted to the north, consistent with Exhibit 2,
6 where the crane is placed. It's not an entire fill.
7 Q So did any more filling activity go on after you came to
8 Manson?
9 A No.
10 Q Mr. Reavis asked you about those round structures there that
11 are right at the northwest corner. Do you have any
12 understanding of what those structures were?
13 A No.
14 Q Do you recall if they were still there when you came to
15 Manson?
16 A No.
17 Q That's a "you don't recall"?
18 A I do not recall having ever seen them before.
19 Q Do you have any knowledge with respect to Exhibit 2 -- if
20 you look on South Myrtle Street as it runs east of the
21 Manson parcel there, continues east to 8th Avenue South.
22 A Okay.
23 Q And you see that property there that's labeled "The Plank
24 Company" and "Royal Line Cabinet Co." and other labels
25 there?

0065

- 1 A Yes.
- 2 Q Do you see that?
- 3 A Yes.
- 4 Q South Orchard on the south and 7th Avenue South on the west.
- 5 A Okay.
- 6 Q Do you have any knowledge of who owned that property when
- 7 Manson acquired the parcel?
- 8 A I see the name Nelson Trucking, and I remember that Nelson
- 9 Trucking was involved down there. But I never had any, you
- 10 know, business dealings with them.
- 11 Q To your knowledge, then, that was not part of the
- 12 Continental Can site?
- 13 A No.
- 14 Q What about the property bounded by South Orchard Street on
- 15 the north, South Garden Street on the south, and 8th Avenue
- 16 South -- or strike that -- by Parcel D on the east? And
- 17 that's where the Tempress building and the Tempress parking
- 18 are labeled there.
- 19 A Correct.
- 20 Q Do you know if that was ever part of the Continental Can
- 21 property?
- 22 A I'm aware that the Tempress plant used to be part of the
- 23 Continental Can, but just in a general sense. And I think
- 24 these two exhibits verify that.
- 25 Q To your understanding, was it still owned by Continental Can

0066

- 1 in 1982, when Manson acquired this property?
- 2 A I don't know.
- 3 Q So your understanding is, it was at some time, but you don't
- 4 know when Continental Can conveyed it to someone else?
- 5 A Yeah. I would -- yeah, I'd speculate that they came
- 6 probably about the same time that we did, Tempress did. But
- 7 I don't know that for sure.
- 8 Q And then finally, from this parcel that includes the Pacific
- 9 Terminals warehouse, so South Garden Street on the north and
- 10 8th Avenue South on the east and South Othello Street on the
- 11 south, was that ever owned by Continental Can, to your
- 12 knowledge?
- 13 A No, not to my knowledge.
- 14 Q Do you have any understanding at all as to the origin of any
- 15 of the fill that was used to fill any part of the Manson
- 16 property?
- 17 A My only understanding of it -- and this predates me -- is
- 18 that it came from -- we were asked to remove it from the
- 19 site that eventually was used for the construction of the
- 20 Trident base.
- 21 Q Okay. So that's at Bangor?
- 22 A Right.
- 23 Q In your understanding, were these dredging spoils, then?
- 24 A Yeah, I -- it would be best for me not to answer that. You
- 25 could ask Glenn and he could give you a definitive answer.

0067

1 Q Okay. But do you have any understanding about that,
2 understanding that you don't think you're the best guy to
3 answer it?
4 A No.
5 Q Looking again at Exhibit No. 11, moored along the southwest
6 border of the property, there are a number of barges;
7 correct?
8 A Correct.
9 Q And to my eye, four of them have cranes or derricks on them;
10 right?
11 A Let's see here. I see one, two, three -- yeah, I'm not
12 clear -- I'd say three of them definitely. One of them I'm
13 not quite sure on. But I would -- yeah, okay.
14 Q Okay? And I understand you're not the operations guy here,
15 but it's true, is it not, that in addition to Manson's work
16 in the dredging business, in its marine construction side,
17 one of its major strengths is that, if you got something
18 real big that needs to be lifted in the water, Manson is the
19 outfit with the equipment to do it, by which I mean a big
20 derrick barge or a big capacity crane?
21 A Well, we do heavy lifting, but I can -- you know, and I --
22 and we have some rigs that can lift up to 600 tons. There
23 are rigs that can lift well over 2,000 tons. So to resist
24 the temptation that -- when you start to talk about moving
25 big items across the water, you've got to be a little bit

0068

1 more specific.
2 Q Okay. But that is a -- this business of lifting heavy
3 objects in a water context is part of what Manson has
4 traditionally done?
5 A Yes.
6 Q And it's a derrick barge with a crane on it that Manson uses
7 for that?
8 A Yes. I can see -- two of the cranes are red. Two of the
9 other ones are gray. And I don't know what those gray ones
10 are about. Manson's colors are red and white. We don't use
11 gray cranes. And it looks like the bigger rigs are gray, so
12 I don't know what they're about.
13 Q So the fact that they are gray doesn't suggest to you
14 anything about whose barges they may have been, other than
15 not Manson?
16 A Yeah.
17 Q Do you know how, on the Manson barges, those derricks are
18 energized? By which I mean, were they hydraulic? diesel?
19 what powers?
20 A Diesel.
21 Q Do you know where Manson's equipment was fueled?
22 A No. Better to ask that of Glenn.
23 Q Manson, in addition to owning or operating barges, by which
24 I include derrick barges and dredges as well as deck
25 barges -- I assume Manson from time to time owned and

0069

1 operated deck barges; correct?
2 A Yes.
3 Q Has Manson owned or operated tugs or other vessels used to
4 tow or otherwise maneuver barges?
5 A Yes.
6 Q Has Manson owned the tugs, or chartered?
7 A Owned and chartered.
8 Q Were those tugs ever moored at this site?
9 A Not to my specific knowledge.
10 Q Do you have any knowledge about where those tugs were
11 moored?
12 A Typically down at our Yard 1, our primary yard. And that's
13 just for accessibility. And it would be unusual to park a
14 tug down there at Yard 2.
15 Q And I got a little confused -- which is not an unusual
16 phenomenon -- when you were talking about Yard 1 and Yard 2.
17 This one here is Yard 2?
18 A Yes.
19 Q Yard 1 is at 5209 East Marginal Way?
20 A Right. That's our prime facility where offices are located
21 and our primary construction operations are in. "Prime" in
22 a very large and expansive sense.
23 Q And that's where, to your memory, the tug moorage was?
24 A You bet. If you park a tug down at Yard 2, you have to
25 figure out a way to get back. It's too far to walk.

0070

1 Q Other than the property you've outlined on Exhibits 2 and 11
2 with the yellow Magic Marker, did Manson own any other
3 property in the vicinity ever, to your knowledge?
4 MR. VERFURTH: Object to the form of the
5 question. Vague as to what "vicinity" is.
6 Q (By Mr. McGee) Okay. Do you --
7 A No.
8 Q Meaning nothing else on Harbor Island?
9 A No.
10 Q Did Manson, to your knowledge, ever lease any other property
11 on Harbor Island?
12 A On Harbor Island?
13 Q Yes.
14 A No.
15 Q Is this property on Harbor Island?
16 A No.
17 Q All right.
18 A That's what's...(Pause.)
19 Q All right.
20 MR. REAVIS: I thought you were going
21 somewhere there.
22 Q (By Mr. McGee) So this property is a good ways south of
23 Harbor Island; correct?
24 A Yes.
25 Q Much further up the Duwamish?

0071

1 A Yeah. The terms much further and a good deal further south,
2 I don't know what you mean by that, but it's about a mile by
3 river, something like that.
4 Q All right. Did, to your knowledge, Manson ever own, lease,
5 or operate on any property, other properties, say, within a
6 half mile of this property?
7 A Yeah. I mean, our primary yard is probably, you know, at
8 equal distance north from here to Harbor Island. And we
9 leased that from King County on a long-term lease.
10 Q And other than Yard 1, then, there's no other property
11 within, say, a mile radius?
12 A No.
13 Q In response to questions from Mr. Reavis concerning the sale
14 of the property to Othello, as I understood it, you said you
15 sold -- not you, but Manson sold it in order to get the
16 optimal price on the property, and then, in turn, leased it
17 back in order to sort of motivate, enable Othello to feel
18 like they had some cash flow to be able to buy the property;
19 correct?
20 A Yes.
21 Q Did Manson continue to conduct any operations, then, out of
22 the property after the sale to Othello?
23 MR. VERFURTH: Objection to the form of
24 the question.
25 Go ahead and answer.

0072

THE WITNESS: Oh, okay.

- 1
2 A Did we conduct any operations? Not of any material degree.
3 Our primary operations -- you know, again, when I say
4 "primary," I'm talking about what we do -- is at our Yard 1.
5 Q (By Mr. McGee) So after the sale to Othello and during the
6 period, then, of the leaseback, what did Manson do at that
7 property?
8 A Well, the -- again, for a couple, three years there, the
9 property pretty much sat. And Northland would have been
10 leasing -- you know, we were involved in improving the
11 offices. We got that taken care of; they set up their
12 offices there. Then they expressed interest in moving their
13 operations from the north part of Lake Washington to this
14 site. And once we understood that that's something we could
15 do, we decided to go ahead and demolish it, those buildings.
16 And we did that. And Northland came on site, and they were
17 our prime tenants there for eight, nine years.
18 Q So -- and I don't mean to try to retrace all the ground
19 that you've already covered in terms of your activities as a
20 landlord, then --
21 A Yeah.
22 Q -- but other than -- is it a fair characterization to say
23 that, once you did the sale to Othello, thereafter you
24 weren't operating for your own account as a -- in the marine
25 construction business out of that yard, but, rather, were

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1 operating as a landlord?

2 A Yeah. That would be the primary -- basically Northland was
3 the prime tenant. And we were subleasing from Northland.

4 MR. VERFURTH: Subleasing to Northland.

5 THE WITNESS: Did I say from? I mean
6 to.

7 Q (By Mr. McGee) Do you know to what tenants did Othello
8 lease the property during its ownership, other than to you?

9 A No.

10 Q With respect to the removal of tanks, you said that -- you
11 thought that was about '86 or '87 time frame.

12 A Actually, '86.

13 Q Okay. And you said that you weren't aware of any permit
14 obtained or paperwork filed with government authorities in
15 connection with that removal yourself?

16 A No. Other than the piece of paper that was just presented
17 to me by Gil.

18 Q Right. Who were your lawyers then?

19 A Carney Badley.

20 Q Do you recall who particularly at Carney Badley dealt with
21 Manson for these kinds of things?

22 A It predates Don, I believe. So it would have been Milt
23 Smith.

24 THE WITNESS: When did you start, Don?

25 MR. VERFURTH: '85.

0074

1 Q (By Mr. McGee) Could you look again at Exhibit No. 10,
2 please. And I recognize that you've already testified, this
3 is the first time you saw this document today, but do you
4 have any understanding, then, as to why on the left side of
5 this document Continental Can Co., USA, is identified as the
6 owner -- I see. It's former owner of tanks; correct?
7 A Correct.
8 Q But you don't have any knowledge that -- again, as you've
9 testified in response to Mr. Reavis' question, Continental
10 Can didn't retain ownership of any tanks after it sold the
11 property to Manson?
12 A Not that I'm aware of.
13 Q Did you ever, to your knowledge, remove any aboveground
14 storage tanks?
15 A No.
16 Q Looking, please, at Exhibit No. 2, in your testimony earlier
17 today, when Mr. Reavis asked you to look at the dotted line
18 objects there in the north -- northerly part of the property
19 that are labeled as the heating oil UST, the 1250-gallon
20 diesel tank and the 12,000-gallon heating oil UST, I believe
21 you used the word "speculate" when you characterized your
22 state of knowledge about whether that was approximately an
23 accurate location of the underground storage tanks that you
24 said existed on the site. As Mr. Verfurth has obviously
25 discussed with you, the word "speculate" has a particular

0075

1 meaning to us, which means, you know, it's worthless.

2 So I want to get from you -- can you help me
3 understand a little better, is it -- is it purely
4 speculation, which is to say, a guess; or do you have any
5 understanding as to the locations of those underground
6 storage tanks, other than they're represented on this
7 diagram as they are?

8 A My recollection was, when I said the word "speculate," it
9 was in reference to Gil's comment to me, he was labeling
10 them as heating and as diesel. And I said, I don't know
11 what they were used for. That's what I was speculating
12 about. It seems to me that this is the approximate
13 location.

14 I also said, it seems to me that this particular
15 heating UST that's the most easterly was closer to those
16 other two. That was what I was -- you know, I was saying,
17 hm. But that -- that's the extent of any speculating that I
18 might have done.

19 Q Okay. In connection with the demolition that you performed
20 after you acquired the property, I believe you said that you
21 have no knowledge of any records of that demolition or
22 disposition of materials.

23 A Correct.

24 Q Do you -- I'm sorry if you already said this. Do you have
25 any knowledge as to where that material was taken?

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1 A No.

2 Q I want to direct your attention now to Northland's
3 operations. Do you have any knowledge of Northland ever
4 carrying cargos that consisted of petroleum products?

5 A No.

6 Q So do you -- are you saying that you have some kind of
7 knowledge that they didn't do it, or just that you have no
8 knowledge that they ever did?

9 A No knowledge that they ever did.

10 MR. McGEE: Thank you. I have nothing
11 further.

12 MR. REAVIS: No more from me.

13 (Signature reserved.)

14 (Deposition concluded
15 at 11:49 a.m.)
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1 STATE OF WASHINGTON) I, KARMEN K. FOX,
2) ss CCR #KN-UD-SK-M310KT, a
3 County of Pierce) duly authorized Notary
4 Public in and for the
5 State of Washington
6 residing at Milton,
7 do hereby certify:

8 That the foregoing deposition of DANIEL DOLMSETH
9 was taken before me and completed on April 30, 2003, and
10 thereafter was transcribed under my direction; that the
11 deposition is a full, true and complete transcript of the
12 testimony of said witness, including all questions, answers,
13 objections, motions and exceptions;

14 That the witness, before examination, was by me
15 duly sworn to testify the truth, the whole truth, and
16 nothing but the truth, and that the witness reserved the
17 right of signature;

18 That I am not a relative, employee, attorney or
19 counsel of any party to this action or relative or employee
20 of any such attorney or counsel and that I am not
21 financially interested in the said action or the outcome
22 thereof;

23 That I am herewith securely sealing the said
24 deposition and promptly delivering the same to Attorney
25 Gillis E. Reavis.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my official seal this day of
April, 2003.

KARMEN K. FOX, CSR, RPR, CRR,
Notary Public in and for the State
of Washington, residing at Milton.